

**BEFORE THE U.S. PATENT & TRADEMARK OFFICE
BOARD OF APPEALS AND INTERFERENCES**

In re application of: **DUNN ET AL.**

Serial No.: **09/902,904**

Group Art Unit: **3749**

Filed: **July 11, 2001**

Examiner: **GRAVINI, STEPHEN**

For: **BOTTLE RACK**

Mail Stop Appeal Brief- Patents
Honorable Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPLICANT'S BRIEF ON APPEAL

Sir:

This is an appeal from the Office Action dated November 22, 2005. Appellant Munchkin, Inc. respectfully submits that the rejections therein were in error, and should be overturned upon *de novo* review, for the reasons set forth herein.

I. The Real Party in Interest

The Real Party in Interest is Munchkin, Inc., a Delaware corporation having its primary place of business in North Hills, California.

II. Related Appeals and Interferences

A related appeal has been filed for Reissue Application Serial No. 09/902,965. No related interference exists.

III. The Status of the Claims

Claims 2, 4-7 and 9-49 are pending in this Application. Claims 1, 3 and 8 have been canceled. Claims 2, 4-7 and 9-34 stand rejected while claims 35-49 have been withdrawn as a result of a restriction requirement. The rejection of claims 2, 4-7 and 9-34 is being appealed.

IV. The Status of Any Amendments Filed After Final Rejection.

There are none.

V. Summary of Claimed Subject Matter

With respect to independent claim 2, the invention is an apparatus for storing an article such as a baby bottle. It includes a tray 12 and a plurality of pegs 18 for supporting an article. As shown in Figs. 1 and 2, the pegs 18 are movable between an operative position, where the pegs extend outwardly, and a storage position, where the “entire” pegs are placed “adjacent” to the upper face of the tray 12. Additionally, the pegs 18 are mounted on the tray 12 “in such a manner that no standing water may collect at a point where a peg is mounted, thereby minimizing potential for mold and bacterial growth.”

With respect to independent claim 4, the invention is an apparatus for storing an article such as a baby bottle. It includes a tray 12 and a plurality of pegs 18 for supporting an article. As shown in Figs. 1 and 2, the pegs 18 are movable between an operative position, where the pegs extend outwardly, and a storage position, where the “entire” pegs are placed “adjacent” to the

upper face of the tray 12. Additionally, the pegs 18 are mounted to the tray 12 “in such a manner as to be movable only about a single axis of rotation,” and the apparatus includes “means for imparting lateral stability to said pegs, further deterring any motion other than about said single axis of rotation.”

With respect to independent claim 9, the invention is an apparatus for storing an article such as a baby bottle. It includes a tray 12, a plurality of pegs 18 for supporting an article and “disk holding means ... for holding baby bottle disks.” As shown in Figs. 1 and 2, the pegs 18 are movable between an operative position, where the pegs extend outwardly, and a storage position, where the “entire” pegs are placed “adjacent” to the upper face of the tray 12.

With respect to independent claim 11, the invention is an apparatus for storing an article such as a baby bottle. It includes a tray 12, a plurality of pegs 18 for supporting an article and “a plurality of ring support members... to support a ring portion of the baby bottle.” As shown in Figs. 1 and 2, the pegs 18 are movable between an operative position, where the pegs extend outwardly, and a storage position, where the “entire” pegs are placed “adjacent” to the upper surface of the tray 12.

With respect to independent claim 18, the invention is an apparatus for storing an article such as a baby bottle. It includes a tray 12, a plurality of pegs 18 for supporting an article and a cutout area for lifting the apparatus by a user. As shown in Figs. 1 and 2, the pegs 18 are movable between an operative position, where the pegs extend outwardly, and a storage position, where the “entire” pegs are placed “adjacent” to the upper surface of the tray 12.

With respect to independent claim 19, the invention is an apparatus for drying and storing an article. It includes a tray 12, a “bottle support means 18 for supporting a baby bottle” and a “disk holding means 50... for holding baby bottle disks” in an area that is isolated from the tray where liquid may collect.

With respect to independent claim 22, the invention is an apparatus for supporting baby bottles for drying. It includes a tray 12, a plurality of pegs 18 for supporting a baby bottle, a mounting means for mounting the pegs 18 to the tray 12 and a frictional means “for frictionally

engaging” the upper portion of the tray 12 with the pegs 18. As shown in Figs. 1 and 2, the pegs 18 are movable between an operative position, where the pegs extend outwardly, and a storage position, where the “entire” pegs are placed “adjacent” to the upper portion of the tray 12.

With respect to independent claim 32, the invention is an apparatus for supporting baby bottles for drying. It includes a tilted tray 12 and a plurality of pegs 18 for supporting an article. The pegs 18 are positioned “away from the edges” of the tray so that “any water falling off of an article ... will fall within said tray.” As shown in Figs. 1 and 2, the pegs 18 are movable between an operative position where the pegs extend outwardly, and a storage position where the “entire” pegs are placed “adjacent” to the upper face of the tray 12.

VI. Grounds of Rejection to be Reviewed on Appeal

Appellant believes that the various issues to be considered on appeal may be concisely enumerated and summarized as follows:

A. Rejection of Claims 4-7, 15-17, 22, 24-26 and 29 Under §112, First Paragraph

Issue 1: Have claims 4-7 and 15-17 reciting “means for imparting lateral stability” or depending from a claim reciting the same been improperly rejected under 35 U.S.C. §112, First Paragraph?

Issue 2: Have claims 6, 7, 17 and 26 reciting “location means for locking” or depending from a claim reciting the same been improperly rejected under 35 U.S.C. §112, First Paragraph?

Issue 3: Have claims 7, 22, 24, 25 and 29 reciting “means for frictional engaging” or “frictional means” or depending from a claim reciting the same been improperly rejected under 35 U.S.C. §112, First Paragraph?

B. Rejection of Claims 2, 4-7, 15-17, 22, 24-26 and 29 Under §112, Second Paragraph

Issue 4: Has claim 2 reciting “such as” been improperly rejected under 35 U.S.C. §112, Second Paragraph?

Issue 5: Have claims 4-7 and 15-17 reciting “means for imparting lateral stability” or depending from a claim reciting the same been improperly rejected under 35 U.S.C. §112, Second Paragraph?

Issue 6: Have claims 6, 7, 17 and 26 reciting “location means for locking” or depending from a claim reciting the same been improperly rejected under 35 U.S.C. §112, Second Paragraph?

Issue 7: Have claims 7, 22, 24, 25 and 29 reciting “means for frictional engaging” or “frictional means” or depending from a claim reciting the same been improperly rejected under 35 U.S.C. §112, Second Paragraph?

C. Rejection of Claims 2, 4-7, 9, 19-26 and 29 Under §102(b) Based on G.B. Patent No. 160,098 to Slipp et al. or U.S. Patent No. 2,472,028 to Son

Issue 8: Has claim 2 been improperly rejected under 35 U.S.C. §102(b) as being anticipated by G.B. Patent No. 160,098 to Slipp et al.?

Issue 9: Have claims 4-7 been improperly rejected under 35 U.S.C. §102(b) as being anticipated by G.B. Patent No. 160,098 to Slipp et al.?

Issue 10: Has claim 9 been improperly rejected under 35 U.S.C. §102(b) as being anticipated by G.B. Patent No. 160,098 to Slipp et al.?

Issue 11: Have claims 22-26 and 29 been improperly rejected under 35 U.S.C. §102(b) as being anticipated by G.B. Patent No. 160,098 to Slipp et al.?

Issue 12: Have claims 19-21 been improperly rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 2,472,028 to Son?

D. Rejection of Claims 10, 11, 12-18, 27, 28 and 30-34 Under §103 Based on a Combination of G.B. Patent No. 160,098 to Slipp et al., U.S. Patent No. 2,472,028 to Son, Swiss Patent CH 685,919 to Folini, U.S. Patent No. 5,492,237 to Chang and U.S. Patent No. 2,879,900 to Fox.

Issue 13: Has claim 10 been improperly rejected under 35 U.S.C. §103(a) as being obvious over G.B. Patent No. 160,098 to Slipp et al. in view of U.S. Patent No. 2,472,028 to Son?

Issue 14: Has claim 11 been improperly rejected under 35 U.S.C. §103(a) as being obvious over G.B. Patent No. 160,098 to Slipp et al. in view of Swiss Patent CH 685,919 to Folini?

Issue 15: Have claims 12-17 been improperly rejected under 35 U.S.C. §103(a) as being obvious over G.B. Patent No. 160,098 to Slipp et al. in view of Swiss Patent CH 685,919 to Folini and in further view of U.S. Patent No. 5,492,237 to Chang?

Issue 16: Have claims 27 and 28 been improperly rejected under 35 U.S.C. §103(a) as being obvious over G.B. Patent No. 160,098 to Slipp et al. in view of Swiss Patent CH 685,919 to Folini and in further view of U.S. Patent No. 5,492,237 to Chang?

Issue 17: Have claims 18 and 21 been improperly rejected under 35 U.S.C. §103(a) as being obvious over G.B. Patent No. 160,098 to Slipp et al. in view of U.S. Patent No. 2,879,900 to Fox?

Issue 18: Have claims 30 and 31 been improperly rejected under 35 U.S.C. §103(a) as being obvious over G.B. Patent No. 160,098 to Slipp et al. in view of U.S. Patent No. 2,879,900 to Fox?

Issue 19: Have claims 32-34 been improperly rejected under 35 U.S.C. §103(a) as being obvious over G.B. Patent No. 160,098 to Slipp et al. in view of U.S. Patent No. 2,879,900 to Fox?

VII. Grouping of Claims

Appellant respectfully submits that claims 2, 4-7 and 9-34, each stands or falls alone and, for the reasons set forth in the arguments below, that each independent claim and the associated dependent claims will be considered separately. No claims shall stand or fall together.

VIII. Argument -- The Rejections and Appellant's Response

A. Rejection of Claims 4-7, 15-17, 22, 24-26 and 29 Under §112, First Paragraph

Issue 1: Have claims 4-7 and 15-17 reciting “means for imparting lateral stability” or depending from a claim reciting the same been improperly rejected under 35 U.S.C. §112, First Paragraph?

The Office Action has rejected claims 4-7 and 15-17 under 35 U.S.C. §112, First Paragraph as failing to comply with the written description requirement. Claim 4 is an independent claim while claim 15 is a dependent claim that ultimately depends from independent claim 11. Claims 5-7 ultimately depend from independent claim 4, and claims 16 and 17 ultimately depend from dependent claim 15.

The Office Action alleges that the phrase “means for imparting lateral stability” in claim 4 is not adequately described in the specification in such a way as to reasonably convey to one skilled in the relevant art. MPEP 2163.02 sets forth the applicable legal standard for the written description requirement:

The courts have described the essential question to be addressed in a description requirement issue in a variety of ways. An objective standard for determining compliance with the written description requirement is, “does the description clearly allow persons of ordinary skill in the art to recognize that he or she invented what is claimed.” In *re* Gosteli, 872 F.2d 1008, 1012, 10 USPQ2d 1614, 1618 (Fed. Cir. 1989). Under *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991), to satisfy the written description requirement, an applicant must convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention, and that the invention, in that context, is whatever is now claimed. The test for sufficiency of support in a parent application is whether the disclosure of the application relied upon “reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter.” *Ralston Purina Co. v. Far-Mar-Co., Inc.*, 772 F.2d 1570, 1575, 227 USPQ 177, 179 (Fed. Cir. 1985) (quoting *In re Kaslow*, 707 F.2d 1366, 1375, 217 USPQ 1089, 1096 (Fed. Cir. 1983)).

Whenever the issue arises, the fundamental factual inquiry is whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as now claimed. See, e.g., *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991). An applicant shows possession of the claimed invention by describing the claimed invention with all of its limitations using such descriptive means as words, structures, figures, diagrams, and formulas that fully set

forth the claimed invention. *Lockwood v. American Airlines, Inc.*, 107 F.3d 1565, 1572, 41 USPQ2d 1961, 1966 (Fed. Cir. 1997). Possession may be shown in a variety of ways including description of an actual reduction to practice, or by showing that the invention was "ready for patenting" such as by the disclosure of drawings or structural chemical formulas that show that the invention was complete, or by describing distinguishing identifying characteristics sufficient to show that the applicant was in possession of the claimed invention. See, e.g., *Pfaff v. Wells Elecs., Inc.*, 525 U.S. 55, 68, 119 S.Ct. 304, 312, 48 USPQ2d 1641, 1647

The phrase "means for imparting lateral stability" is clearly means-plus-function language, which is authorized by 35 U.S.C. §112, Sixth Paragraph. The sixth paragraph of Section 112 permits a patent applicant to express claimed structure as a means for performing a function "without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding structure, material, or acts described in the specification and equivalents thereof." When there is insufficient recital of structure, material or acts in support thereof provided in the specification to support a means plus function limitation in a claim, the claim should be preferably be rejected under Section 112, second paragraph, rather than Section 112, first paragraph. "If one employs means plus function language in a claim, one must set forth in the specification an adequate disclosure showing what is meant by that language. If an applicant fails to set forth an adequate disclosure, the applicant has in effect failed to particularly point out and distinctly claim the invention as required by the second paragraph of section 112." *In re Donaldson Co.*, 16 F.3d 1189, 1195, 29 USPQ2d 1845, 1850 (Fed. Cir. 1994) (in banc).

The specification of Applicant's originally filed patent application included the following paragraph as part of the original disclosure, which clearly describes the preferred structure for imparting lateral stability to the pegs 18:

Mounting structure 20, by ganging adjacent pegs 18 and adjacent nipple support members 32 together by use of a common axle, thereby imparts lateral stability to the pegs 18 and the nipple support members 32, further deterring any motion other than about the single axis of rotation 40.

The originally filed specification also states that the mounting structure for the pegs 18 is substantially identical to that that is provided for the nipple support members 32, meaning that the mounting structure for the pegs 18 also provides lateral stability for the pegs 18:

The nipple support members 32 are, in a manner that is substantially identical to that of the pegs 18, mounted by means of a permanent mounting structure 20 for movement between a

first storage position, where the entire nipple support member 32 is positioned relatively close to the upper face 16 for storage and packaging purposes, and a second, operative position where the nipple support member 32 is positioned at a large angle with respect to the upper face 16. In other words, the mounting structure 20 for the pegs 18 is substantially identical to that of the nipple support members 32.

Applicant respectfully submits that the originally filed disclosure quoted above in conjunction with the originally filed drawings would convey with reasonable clarity to a person having ordinary skill in the art that Applicant was in possession of the “means for imparting lateral stability” both with respect to the nipple support members 32 and with respect to the pegs 18 at the time that the original patent application was filed.

Similarly, dependent claim 15 explicitly recites “means for imparting lateral stability to said ring support members.” Applicant respectfully submits that the portions of the disclosure that are quoted above and the corresponding originally filed drawings would convey with reasonable clarity to a person having ordinary skill in the art that Applicant was in possession of “means for imparting lateral stability to said ring support members” at the time that the patent application was filed.

For the reasons stated above, Appellant respectfully requests the Board to overturn the Section 112, First Paragraph rejections that have been applied to claims 4-7 and 15-17.

Issue 2: Have claims 6, 7, 17 and 26 reciting “location means for locking” or depending from a claim reciting the same been improperly rejected under 35 U.S.C. §112, First Paragraph?

The Examiner has rejected claims 6, 7, 17 and 26 under 35 U.S.C. §112, First Paragraph as failing to comply with the written description requirement. Claims 6, 7, 17 and 26 are dependent claims. The rejection alleges that the phrase “means for locking” in claim 6 is not adequately described in the specification in such a way as to reasonably convey to one skilled in the relevant art.

The originally filed specification of the patent application that matured into the ‘784 patent contained the following paragraph:

As may best be seen in FIGURES 1 and 4, each axle 22, 24, 28, 30 includes at least one locating structure 26, the purpose of which is to lock the respective axle in a rotational position that corresponds to the second operative position shown in FIGURE 1. In the illustrated embodiment, first and second axles 22, 24 include two such locating structures 26, while the third and fourth axles 28, 30 which support the shorter nipple support members 32, are equipped with but one locating structure 26. The construction of the locating structures 26, however, is uniform throughout the four axles 22, 24, 28, 30. As may be seen in FIGURE 4, locating structure 26 includes a cam member 43 having a lower surface 44 that is constructed and arranged to bear against the upper face 16 of tray 12, and a forward surface 46 that is constructed and arranged to come into contact with a rear surface 44 of a cam stop 42 that projects upwardly and is unitary with the upper face 16 of tray 12. FIGURE 1 and FIGURE 4 both depict the locking structure 26 in the second, operative position. The path between the first and second positions is indicated in FIGURE 4 by arrow 46. The nipple support member 32 is prevented from bending backwardly in the direction away from the first storage position by contact of the forward surface 46 of cam member 43 with the rear surface 44 of cam stop 42.

Since the purpose of the locating structure 26 is to lock the axle, it is appropriate to refer the locating structure 26 also as the locking structure 26, or as a “means for locking.” As illustrated in FIGURE 1, the locking structure 26 is referenced by an arrow pointing to the locking mechanism on the tray 12. Furthermore, FIGURE 4 details the locking structure 26 in a cross sectional view. Based upon the above disclosures, Appellant respectfully submits that support for the claim terms, “means for locking” in claim 6 were adequately described in the specification of the ‘784 patent in a manner that is sufficient to reasonably convey possession of the invention to one skilled in the relevant art.

For the reasons stated above, Appellant respectfully requests the Board to overturn the currently pending Section 112, First Paragraph rejections of claims 6, 7, 17 and 26.

Issue 3: Have claims 7, 22, 24, 25 and 29 reciting “means for frictional engaging” or “frictional means” or depending from a claim reciting the same been improperly rejected under 35 U.S.C. §112, First Paragraph?

The Office Action has rejected claims 7, 22, 24, 25 and 29 under 35 U.S.C. §112, First Paragraph as failing to comply with the written description requirement. Claim 22 is an independent claim while claims 7, 24, 25 and 29 are dependent claims. Claims 24, 25 and 29 ultimately depend from independent claim 22. The rejection alleges that the phrase “means for

frictional engaging” in claim 7 is not adequately described in the specification in such a way as to reasonably convey the invention to one skilled in the relevant art.

The originally filed disclosure of the application that matured into the ‘784 patent contained the following paragraph:

If it is desired to move the nipple support member 32 from the second, operative position shown in FIGURE 1 to the first storage position shown in FIGURE 2, a user will push the nipple support member 32 in the desired direction. Initially, this movement will be deterred by the contact of the lower surface 44 and the leading edge of the lower surface with the upper face 16 of tray 12. Once the leading edge 45 has cleared the upper face, however, the nipple support member 32 will easily fold down into the position that is shown in FIGURE 2.

As it is illustrated in FIGURE 4, the “frictional contact” is made between the lower surface 44 and the leading edge 45. The above frictional contact accomplishes “frictional engaging.” Based upon the above disclosures, Appellant respectfully submits that the claim terms, “means ... for frictional engaging” in claim 7 is adequately described in the originally filed specification of the ‘784 patent in a way that would reasonably convey possession of the invention at the time of the filing of the original patent application to one skilled in the relevant art.

For the reasons stated above, Appellant respectfully requests the Board to overturn the currently pending Section 112, First Paragraph rejections of claims 7, 22, 24, 25 and 29.

B. Rejection of Claims 2, 4-7, 15-17, 22, 24-26 and 29 Under §112, Second Paragraph

Issue 4: Has claim 2 reciting “such as” been improperly rejected under 35 U.S.C. §112, Second Paragraph?

Claim 2 recites “a tray having a bottom face that is adapted to be supported by an underlying surface such as a counter top, and an upper face.” Proper claim construction of this phrase would require that the tray be considered to be a claim element and that the tray further includes a bottom face and an upper face. The additional phraseology of “adapted to be supported by an underlying surface such as a counter top” is clearly a recitation of possible environmental structure and a description of the function of the bottom face; it is not part of the claimed combination per se.

MPEP 2173.02 provides guidance to patent examiners on the issue of whether the phrase “such as” will render a claim indefinite:

The mere use of the phrase “such as” in the claim does not by itself render the claim indefinite. Office policy is not to employ *per se* rules to make technical rejections. Examples of claim language which have been held to be indefinite set forth in MPEP § 2173.05(d) are fact specific and should not be applied as *per se* rules. The test for definiteness under 35 U.S.C. 112, second paragraph, is whether “those skilled in the art would understand what is claimed when the claim is read in light of the specification.” *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576, 1 USPQ2d 1081, 1088 (Fed. Cir. 1986). If one skilled in the art is able to ascertain in the example above, the meaning of the terms “suitable liquid” and “solids of a filtering agent” in light of the specification, 35 U.S.C. 112, second paragraph, is satisfied. If upon review of the claim as a whole in light of the specification, the examiner determines that a rejection under 35 U.S.C. 112, second paragraph, is not appropriate in the above-noted example, but is of the opinion that the clarity and the precision of the language can be improved by the deletion of the phrase “such as” in the claim, the examiner may make such a suggestion to the applicant. If applicant does not accept the examiner’s suggestion, the examiner should not pursue the issue.

In this case, Appellant respectfully submits that a person skilled in the art would understand what is claimed when claim 2 is read in light of the specification, and further respectfully submits that such understanding would not be impeded in any way by the presence of the “such as” phraseology because that phraseology is not being applied to any of the claimed elements that are set forth in the claim. Accordingly, Appellant respectfully requests that the Section 112, second paragraph rejection of claim 2 be overturned.

Issue 5: Have claims 4-7 and 15-17 reciting “means for imparting lateral stability” or depending from a claim reciting the same been improperly rejected under 35 U.S.C. §112, Second Paragraph?

The rejection alleges that claims reciting “lateral stability” lack “antecedent basis from the claims.” Frankly, Appellant is uncertain as to the meaning of this rejection. However, the rejection appears to imply that there is inadequate support for the phrase “means for imparting lateral stability” in the specification. As discussed with respect to Issue 1 for the Section 112, First Paragraph rejections, the “means for imparting lateral stability” was adequately described in the originally filed specification. Accordingly, to the extent that this rejection is understood, Appellant respectfully submits that it is in error and should be overturned.

Issue 6: Have claims 6, 7, 17 and 26 reciting “location means for locking” or depending from a claim reciting the same been improperly rejected under 35 U.S.C. §112, Second Paragraph?

The rejection alleges that claims reciting “locking” lack “antecedent basis from the claims.” Again, Appellant is uncertain as to the meaning of this rejection. However, the rejection appears to imply that there is inadequate support for the phrase “location means for locking” in the originally filed specification. As discussed with respect to Issue 2 for the section 112, First Paragraph rejections, the location means for locking was in fact described in the originally filed specification. Accordingly, to the extent that this rejection is understood, Appellant respectfully submits that it is in error and should be overturned.

Issue 7: Have claims 7, 22, 24, 25 and 29 reciting “means for frictional engaging” or “frictional means” or depending from a claim reciting the same been improperly rejected under 35 U.S.C. §112, Second Paragraph?

The rejection alleges that claims reciting “friction” lack “antecedent basis from the claims.” Again, Appellant is uncertain as to the meaning of this rejection. However, the rejection appears to imply that there is inadequate support for the phrase “means for frictional engaging” in the originally filed specification. As discussed above with respect to Issue 3 for the section 112, First Paragraph rejections, the “means for frictional engaging” was in fact described in the originally filed specification. Accordingly, to the extent that this rejection is understood, Appellant respectfully submits that it is in error and should be overturned.

C. Rejection of Claims 2, 4-7, 9, 19-26 and 29 Under §102(b) Based on G.B. Patent No. 160,098 to Slipp et al.

Issue 8: Has claim 2 been improperly rejected under 35 U.S.C. §102(b) as being anticipated by G.B. Patent No. 160,098 to Slipp et al.?

Claim 2 is an independent claim and is reproduced as follows for the convenience of the Examiners-in-Chief:

2. An apparatus for storing an article, comprising:

a tray having a bottom face that is adapted to be supported by an underlying surface such as a counter-top, and an upper face; and

a plurality of pegs extending outwardly from said upper face, each of said pegs being sized and arranged so as to be able to support an article, and

wherein each of said pegs are permanently mounted to said tray in such a manner as to be movable between a first storage position, wherein said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus, and a second, operative position, wherein said peg is positioned so as to extend outwardly from said upper surface, so as to enable said peg to support an article, wherein said apparatus can conveniently be folded for packaging and storage purposes, and wherein said pegs are mounted to said tray in such a manner that no standing water may collect at a point where a peg is mounted, thereby minimizing potential for mold and bacterial growth.

The Office Action of November 22, 2005 explained this rejection as follows:

a tray a & b having a bottom face that is adapted to be supported by an underlying surface such as a counter-top and an upper face as expressly shown in figures 1 and 3 and expressly discussed on the first page of that reference in lines 73-78; and

a plurality of pegs c or d extending outwardly from said upper face, each of said pegs being sized and arranged so as to be able to support an article as expressly shown in figures 1-4 and expressly discussed on the first page of that reference in lines 79-80 and on the second page lines 9-10, and

wherein each of said pegs are permanently mounted to said tray in such a manner as to be movable between a first storage position wherein said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus and a second, operative position, wherein said peg is positioned so as to extend outwardly from said upper surface, so as to enable said peg to support an article, wherein said apparatus can conveniently be folded for packaging and storage purposes as expressly shown in figures 3 & 4 and expressly discussed on the first page of that reference in lines 17-28 and on the second page lines 21-26 and wherein said pegs are mounted to said tray in such a manner that no standing water may collect at a point where a peg is mounted, thereby minimizing potential for mold and bacterial growth as inherently disclosed on the first page lines 49-51 wherein the disclosed pegs c or d carried by bar e that fits within trough a which allows water from domestic articles is considered to anticipate the claimed tray mounted peg where no standing water collects at a peg mounted point minimizing mold/bacteria growth potential because both allow article drying by configuring pegs mounted away from any standing water..

G.B. Patent No. 160,098 to Slipp et al. (hereinafter “the Slipp et al. reference”) fails to make a *prima facie* case of anticipation. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art

reference.” *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Among other things, independent claim 2 explicitly recites “said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus.” With respect to this claim limitation, Office Action states that “said apparatus can conveniently be folded for packaging and storage purposes as expressly shown in figures 3 & 4 and expressly discussed on the first page of that reference in lines 17-28 and on the second page lines 21-26.”

Page 1, lines 17-28 of Slipp et al. generally disclose “two vertical folding side frames, hinged at the side of a trough.” In fact, the Slipp et al. reference discloses the “horizontal bars e” which “fit snugly within the length of the trough (a) to the ends of which it is pivoted as indicated at f” as shown in FIGURES 1 and 3. Page 2, lines 21-26 of Slipp et al. further disclose that the pegs c, d on the bars e are extended and folded as is illustrated in FIGURES 3 and 4. Although “the rack occupies a relatively small[er] space” in the folded position than it does in the extended position, a significant portion of the pegs c and d remains above the trough (a) in the folded position. In other words, the entire length of the pegs c and d is not positioned within the trough (a) or adjacent to the upper face of the tray when the article is in the folded position. This is clearly illustrated in FIGURE 4 of the reference.

Appellant’s independent claim 2 explicitly recites that “said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus [emphasis added].” This means that the entire length of the pegs must be positioned “adjacent to said upper face” for the purpose of “storage and packaging of” the rack. It is clear that Slipp et al. does not satisfy this limitation. In fact, it appears from FIGURE 4 of the reference that approximately half of the length of the pegs c and d remains above the side wall of the trough (a) and the rotatable horizontal bar e when the pegs are in the folded position. For these reasons, Appellant respectfully submits that the Slipp et al. reference fails to anticipate independent claim 2.

Furthermore, independent claim 2 recites that “said pegs are mounted to said tray in such a manner that no standing water may collect at a point where a peg is mounted, thereby

minimizing potential for mold and bacterial growth.” With respect to this limitation, the last Office Action states that “as inherently disclosed on the first page lines 49-51 wherein the disclosed pegs **c** or **d** carried by bar **e** that fits within trough **a** which allows water from domestic articles is considered to anticipate the claimed tray [and the] mounted peg where no standing water collects at a peg mounted point minimizing mold/bacteria growth potential because both allow article drying by configuring pegs mounted away from any standing water.”

In fact, page 1, lines 49-51 of the Slipp et al. reference discloses that “[a]ny drainage from the plates or other articles fall [sic] into the trough, whence they can be subsequently emptied.” Trough (a) is shown in Fig. 1 of the reference and is located where the “receptacle” is constructed at the bottom of the racks with the side walls and the bottom plate. This means that if the trough is not emptied by a user, standing water will collect in the trough and eventually reach the locations where the pegs are mounted.

In contrast, independent claim 2 explicitly recites that “no standing water may collect at a point where a peg is mounted to said tray [emphasis added].” With regard to the above structural requirement, the Slipp et al. reference discloses that the pegs c and d are mounted closely along the side walls and that the rotatable bar portions e are actually placed against the side walls as illustrated in FIGURE 3. Because of the above structure, as the water is drained from an article g, at least some of the water collects on the flat top surface of the side walls a and also on the flat top surface of the bar e “at a point where a peg is mounted.” Because of the flat top surfaces, the water remains there and fails to “minimiz[e] potential for mold and bacterial growth.” Accordingly, Appellant respectfully submits that the Slipp et al. reference fails to anticipate independent claim 2.

For the reasons stated above, Appellant respectfully requests the Board to overturn the prior art rejection of independent claim 2.

Issue 9: Have claims 4-7 been improperly rejected under 35 U.S.C. §102(b) as being anticipated by G.B. Patent No. 160,098 to Slipp et al.?

Claim 4 is the independent claim for rejected dependent claims 5-7 and is reproduced as follows for the convenience of the Examiners-in-Chief:

4. An apparatus for storing an article, comprising:

 a tray having a bottom face that is adapted to be supported by an underlying surface and an upper face; and

 a plurality of pegs extending outwardly from said upper face, each of said pegs being sized and arranged so as to be able to support an article, and wherein

 each of said pegs are permanently mounted to said tray in such a manner as to be movable between a first storage position, wherein said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus, and a second, operative position, wherein said peg is positioned so as to extend outwardly from said upper surface, so as to enable said peg to support an article, wherein said apparatus can conveniently be folded for packaging and storage purposes, and wherein said pegs are mounted to said tray in such a manner as to be movable only about a single axis of rotation and wherein said apparatus further comprises means for imparting lateral stability to said pegs, further deterring any motion other than about said single axis of rotation.

The rejection of independent claim 4 was explained in the Office Action of November 22, 2005 as follows:

 a tray a & b having a bottom face that is adapted to be supported by an underlying surface and an upper face as expressly shown in figures 1 and 3 and expressly discussed on the first page of that reference in lines 73-78; and

 a plurality of pegs c or d extending outwardly from said upper face, each of said pegs being sized and arranged so as to be able to support an article as expressly shown in figures 1-4 and expressly discussed on the first page of that reference in lines 79-80 and on the second page lines 9-10, and wherein

 each of said pegs are permanently mounted to said tray in such a manner as to be movable between a first storage position, wherein said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus and a second, operative position, wherein said peg is positioned so as to extend outwardly from said upper surface, so as to enable said peg to support an article, wherein said apparatus can conveniently be folded for packaging and storage purposes and wherein said pegs are mounted to said tray in such a manner as to be movable only about a single axis of

rotation and wherein said apparatus further comprises means for imparting lateral stability to said pegs, further deterring any motion other than about a single axis of rotation as expressly shown in figures 3 & 4 and expressly discussed on the first page of that reference in lines 17-28 and on the second page lines 21-26 and wherein said single axis motion for lateral stability as inherently disclosed on the first page lines 49-51 wherein the disclosed pegs **c** or **d** carried by bar **e** that fits within trough **a** which allows upward or downward peg rotation along a pivot point because both allow single axis peg rotation;

Slipp et al. fails to provide a *prima facie* case of anticipation for independent claim 4. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Among other things, claim 4 explicitly recites “said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus.” The Office Action states that “said apparatus can conveniently be folded for packaging and storage purposes” without providing any specific source for the statement in the Slipp et al. reference. Since the Office Action has referred to “figures 3 & 4” and “the first page of that reference in lines 17-28 and on the second page lines 21-26” for the same quoted claim language for the anticipatory rejection of claim 2, Appellant assumes that the same portion of the disclosure of the Slipp et al. reference is felt to be applicable to claim 4. Lines 17-28 of Slipp et al. generally disclose “two vertical folding side frames, hinged at the side of a trough.” In fact, Slipp et al. discloses the “horizontal bars **e**” which “fit snugly within the length of the trough (a) to the ends of which it is pivoted as indicated at **f**” as shown in FIGURES 1 and 3. The lines 21-26 of the Slipp et al. reference further disclose that the pegs **c**, **d** on the bars **e** are extended and folded as respectively illustrated in FIGURES 3 and 4. Although “the rack occupies a relatively small[er] space” in the folded position than the extended position, a significant portion of the pegs **c** and **d** remains above the trough (a) in the folded position. That is, not entire length of the pegs **c** and **d** is placed within the trough (a) or adjacent to the upper face of the tray as illustrated in FIGURE 4.

In contrast, independent claim 4 explicitly recites that “said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus [emphasis added].” As illustrated in FIGURE 2, the current invention as explicitly recited in independent claim 4

requires that an entire portion or length of the pegs be positioned “adjacent to said upper face” for the purpose of “storage and packaging of” the rack. With regard to the above structural requirement, the Slipp et al. reference discloses that only some portions of the pegs c and d are folded adjacent to the upper face, but significant other portions are not placed “adjacent” to the “upper face” of the tray. It appears from FIGURE 4 of the Slipp et al. reference that approximately a half of the length of the pegs c and d remains above the side wall of the trough (a) and the rotatable horizontal bar e. Thus, Appellant respectfully submits that the Slipp et al. reference fails to anticipate the above described patentable feature of the current invention as explicitly recited in independent claim 4.

Furthermore, independent claim 4 recites “means for imparting lateral stability to said pegs, further deterring any motion other than about said single axis of rotation.” With respect to this claimed element, the Office Action states that “said apparatus further comprises means for imparting lateral stability to said pegs, further deterring any motion other than about a single axis of rotation as expressly shown in figures 3 & 4 and expressly discussed on the first page of that reference in lines 17-28 and on the second page lines 21-26 and wherein said single axis motion for lateral stability as inherently disclosed on the first page lines 49-51 wherein the disclosed pegs **c** or **d** carried by bar **e** that fits within trough **a** which allows upward or downward peg rotation along a pivot point because both allow single axis peg rotation.”

Page 1, lines 17-28 of Slipp et al. generally disclose “two vertical folding side frames, hinged at the side of a trough.” The reference discloses the “horizontal bars e” which “fit snugly within the length of the trough (a) to the ends of which it is pivoted as indicated at f” as shown in FIGURES 1 and 3. Page 2, lines 21-26 of Slipp et al. further disclose that the pegs c, d on the bars e are extended and folded as is illustrated in FIGURES 3 and 4. Although “the rack occupies a relatively small[er] space” in the folded position than it does in the extended position, a significant portion of the pegs c and d remains above the trough (a) in the folded position. In other words, the entire length of the pegs c and d is not positioned within the trough (a) or adjacent to the upper face of the tray when the article is in the folded position. This is clearly illustrated in FIGURE 4 of the reference.

In contrast, independent claim 4 explicitly recites “means for imparting lateral stability to said pegs, further deterring any motion other than about said single axis of rotation [emphasis added].” In other words, independent claim 4 requires that “means for imparting” provides “lateral stability to said pegs.” As shown in FIGURE 1, this requirement is accomplished by the lateral extension of the axles 22, 24, 28 and 30 across the width of the tray 12 that “said pegs are mounted to said tray in such a manner as to be movable only about a single axis of rotation” as the independent claim 4 further recites. With regard to the above laterally extending structural requirement, Slipp et al. discloses that “[e]ach of the bars e is made of length such that it can fit snugly within the length of the trough a to the ends of which it is pivoted as indicated at f” as illustrated in FIGURE 1 or 2. Because of the above longitudinal structure, the apparatus of the Slipp et al. reference provides only longitudinal stability to the pegs c and d, but clearly lacks any structure to impart “lateral stability to said pegs” as called for by independent claim 4. Thus, Appellant respectfully submits that the Slipp et al. reference fails to anticipate the above described second patentable feature of the current invention as explicitly recited in independent claim 4.

Finally, the means-plus-function language in claim 4 must legally be interpreted by the US Patent and Trademark Office in a manner that is consistent with the *In re Donaldson* decision. The Court of Appeals for the Federal Circuit, in its *en banc* decision *In re Donaldson Co.*, 16 F.3d 1189, 29 USPQ2d 1845 (Fed. Cir. 1994), decided that a “means-or-step-plus-function” limitation should be interpreted as requiring equivalents to the corresponding structure, material or acts described in the specification. In *Donaldson*, the Federal Circuit stated:

Per our holding, the “broadest reasonable interpretation” that an examiner may give means-plus-function language is that statutorily mandated in paragraph six. Accordingly, the PTO may not disregard the structure disclosed in the specification corresponding to such language when rendering a patentability determination.

Accordingly, the specification of the ‘784 patent discloses a single preferred embodiment as illustrated in FIGURES 1 and 2. Independent claim 4 explicitly recites “means for imparting lateral stability to said pegs.” Correspondingly, lines 1 through 5 in column 4 of the ‘784 patent describe the imparting means as:

Mounting structure 20, by ganging adjacent pegs 18 and adjacent ring support members 32 together by use of a common axle, thereby imparts lateral stability to the pegs 18 and the ring support members 32, further deterring any motion other than about the single axis of rotation 40. Accordingly, the pegs 18 are constrained to move in a predetermined plane of rotation 49.

As illustrated in FIGURES 1 and 2, the mounting structure 20 is referenced by an arrow pointing to the areas near the lateral walls of the tray 12. Clearly, the axles 22, 24, 28 and 30 extend laterally or over the width of the tray 12. Based upon the structure disclosed in the specification corresponding to the means plus function limitation, the “means for imparting lateral stability to said pegs” should be construed to have the structure extending over the width of the tray rather than the length of the tray. Based upon the §112¶6 statutory claim construction, Appellant respectfully submits that the Slipp et al. reference fails to anticipate the “means for imparting lateral stability” as explicitly recited in claim 4.

Based upon the above-stated reasons, Appellant respectfully requests the Board to overturn the currently pending rejection of independent claim 4. Dependent claims 5-7 ultimately depend from independent claim 4 and incorporate the “means for imparting lateral stability.”

Dependent claim 5 incorporates the patentable feature of independent claim 4 and additionally recites “at least one axle.” Therefore, Appellant submits that claim 5 is allowable for the reasons stated above with regard to claim 4 and by virtue of the significant additional limitations that are set forth therein.

Dependent claim 6 incorporates the patentable feature of independent claim 4 and additionally recites “location means.” Therefore, Appellant submits that claim 6 is allowable for the reasons discussed above with regard to claim 4 and by virtue of the significant additional limitations that are set forth therein.

Dependent claim 7 incorporates the patentable feature of independent claim 4 and additionally recites “means ... for frictional engaging.” Therefore, Appellant submits that claim 7 is allowable for the reasons discussed above with regard to claim 4, and by virtue of the significant additional limitations that are set forth therein.

For all of the reasons stated above, Appellant respectfully requests the Board to overturn the §102 rejections of claims 4-7 that have been applied in the Office Action.

Issue 10: Has claim 9 been improperly rejected under 35 U.S.C. §102(b) as being anticipated by G.B. Patent No. 160,098 to Slipp et al.?

Claim 9 is an independent claim and is reproduced as follows for the convenience of the Examiners-in-Chief:

9. An apparatus for storing an article, comprising:

a tray having a bottom face that is adapted to be supported by an underlying surface, and an upper face; and

a plurality of pegs extending outwardly from said upper face, each of said pegs being sized and arranged so as to be able to support an article,

disk holding means, connected to said upper face of said tray, for holding baby bottle disks in a location that is isolated from areas of said tray in which liquid may collect; and wherein

each of said pegs are permanently mounted to said tray in such a manner as to be movable between a first storage position, wherein said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus, and a second, operative position, wherein said peg is positioned so as to extend outwardly from said upper surface, so as to enable said peg to support an article, wherein said apparatus can conveniently be folded for packaging and storage purposes.

The Office Action of November 22, 2005 explained the rejection of independent claim 9 as follows:

a tray **a & b** having a bottom face that is adapted to be supported by an underlying surface and an upper face as expressly shown in figures 1 and 3 and expressly discussed on the first page of that reference in lines 73-78; and

a plurality of pegs **c or d** extending outwardly from said upper face, each of said pegs being sized and arranged so as to be able to support an article as expressly shown in figures 1-4 and expressly discussed on the first page of that reference in lines 79-80 and on the second page lines 9-10,

disk holding means, connected to said upper face of said tray, for holding baby bottle disks in a location that is isolated from areas of said tray in which liquid may collect (this feature is interpreted to invoke the sixth paragraph of 35 USC 112 since each of the elements is considered satisfied referring to MPEP 2181 and the statement

of intended use for holding is not considered to patentably distinguish the claimed invention over the prior art teachings of Slipp); and wherein

each of said pegs are permanently mounted to said tray in such a manner as to be movable between a first storage position wherein said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus and a second, operative position, wherein said peg is positioned so as to extend outwardly from said upper surface, so as to enable said peg to support an article, wherein said apparatus can conveniently be folded for packaging and storage purposes as expressly shown in figures 3 & 4 and expressly discussed on the first page of that reference in lines 17-28 and on the second page lines 21-26 and wherein said pegs are mounted to said tray in such a manner to allow packaging and storage as inherently disclosed on the first page lines 49-51 wherein the disclosed pegs **c** or **d** carried by bar **e** that fits within trough **a** which allows water from domestic articles is considered to anticipate the claimed tray mounted peg can be folded for the claimed intended use of packaging and storage because both allow article drying by configuring pegs upward for drying use and downward for packaging and/or storage.

Appellant respectfully submits that Slipp et al. fails to make a *prima facie* case of anticipation of independent claim 9. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Among other things, claim 9 explicitly recites “said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus.” The Office Action states that “said apparatus can conveniently be folded for packaging and storage purposes” without providing any specific source for the statement in the Slipp et al. reference. Since the Office Action has referred to “figures 3 & 4” and “the first page of that reference in lines 17-28 and on the second page lines 21-26” for the same claim language in the §102 anticipation rejection of claim 2, Appellant assumes that the same disclosures of the Slipp et al. reference are also felt to be applicable to claim 4. Lines 17-28 of Slipp et al. generally disclose “two vertical folding side frames, hinged at the side of a trough.” In fact, Slipp et al. discloses the “horizontal bars **e**” which “fit snugly within the length of the trough (**a**) to the ends of which it is pivoted as indicated at **f**” as shown in FIGURES 1 and 3. The lines 21-26 of the Slipp et al. reference further disclose that the pegs **c**, **d** on the bars **e** are extended and folded as respectively illustrated in FIGURES 3 and 4. Although “the rack occupies a relatively small[er] space” in the folded position than the extended position, a

significant portion of the pegs c and d remains above the trough (a) in the folded position. That is, not the entire length of the pegs c and d is placed within the trough (a) or adjacent to the upper face of the tray as illustrated in FIGURE 4.

In contrast, independent claim 9 explicitly recites that “said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus [emphasis added].” As illustrated in FIGURE 2, the current invention as explicitly recited in independent claim 4 requires that an entire portion or length of the pegs be positioned “adjacent to said upper face” for the purpose of “storage and packaging of” the rack. With regard to the above structural requirement, the Slipp et al. reference discloses that only some portions of the pegs c and d are folded adjacent to the upper face, but significant other portions are not placed “adjacent” to the “upper face” of the tray. It appears from FIGURE 4 of the Slipp et al. reference that approximately a half of the length of the pegs c and d remains above the side wall of the trough (a) and the rotatable horizontal bar e. Thus, Appellant respectfully submits that the Slipp et al. reference fails to anticipate the above described patentable feature of the current invention as explicitly recited in independent claim 9.

In addition, independent claim 9 explicitly recites “disk holding means, connected to said upper face of said tray, for holding baby bottle disks in a location that is isolated from areas of said tray in which liquid may collect.” The “disk holding means” holds “baby bottle disks” and is a separate structural element from the “pegs” that “support an article.” With respect to the above quoted patentable feature of the invention, the Office Action states that “this feature [the disk holding means] is interpreted to invoke the sixth paragraph of 35 USC 112 since each of the elements are considered satisfied referring to MPEP 2181 and the statement of intended use for holding is not considered to patentably distinguish the claimed invention over the prior art teachings of Slipp.” Again, such means-plus-function language in claim 4 must be interpreted by the U.S. Patent and Trademark Office in a manner that is consistent with the *In re Donaldson* decision, namely as requiring equivalents to the corresponding structure, material or acts that are described in the specification. In *Donaldson*, the Federal Circuit stated:

Per our holding, the "broadest reasonable interpretation" that an examiner may give means-plus-function language is that statutorily mandated in paragraph six. Accordingly, the PTO may not disregard the structure disclosed in the specification corresponding to such language when rendering a patentability determination.

The Office Action fails to identify or take into account what the "disk holding means" or its technical equivalent is as disclosed in the Appellant's '784 patent. Instead, it summarily concludes in an improper manner that "the statement of intended use for holding is not considered to patentably distinguish the claimed invention over the prior art teachings of Slipp."

The proper means-plus-function claim construction under the §112¶6 statutory requirements requires careful examination of the disclosure in the '784 patent. Lines 39 through 53 in column 4 of the '784 patent describe the "disk holding system 50" with respect to FIGURE 1. The disk holding system 50 "hold[s] baby bottle disks in a location that is isolated from area of the tray 12 in which liquid may collect" and "includes an upstanding boss members 52 that projects upwardly from the upper face 16 of tray 12 and has a plurality of disc receiving slots 54 defined therein." Thus, a proper construction of the "disk holding means" for examination purposes necessarily limits its scope to the "disk holding system 50" that is disclosed in the specification and its technical equivalents. Slipp et al. discloses only "pegs c and d;" it discloses or suggests no other structure that is even remotely related to a "disk holding means ... for holding baby bottle disks." Based upon the §112¶6 statutory claim construction, Appellant respectfully submits that the Slipp et al. reference fails to anticipate the "disk holding means" as it is set forth in claim 9.

For the reasons stated above, Appellant respectfully requests the Board to overturn the prior art rejection of independent claim 9.

Issue 11: Have claims 22-26 and 29 been improperly rejected under 35 U.S.C. §102(b) as being anticipated by G.B. Patent No. 160,098 to Slipp et al.?

Claim 22 is the independent claim for rejected dependent claims 23-26 and 29 and is reproduced as follows for the convenience of the Examiners-in-Chief:

22. An apparatus for supporting baby bottles for drying, comprising:

a tray having a bottom portion that is adapted to be supported by an underlying surface and an upper portion;

a plurality of pegs extending outwardly from said upper portion, each of said pegs being sized and arranged so as to be able to support a baby bottle;

mounting means for mounting said pegs to said tray so that said pegs are movable while mounted to said tray between a first storage position, wherein said entire peg is positioned adjacent to said upper portion for storage and packaging of said apparatus, and a second, operative position, wherein said peg is positioned so as to extend outwardly from said upper portion, so as to enable said peg to support an article, wherein said apparatus can conveniently be folded for packaging and storage purposes; and

frictional means connected to said pegs for frictionally engaging said upper portion of said tray when said pegs are moved between said first storage position and said second operative position.

The Office Action of November 22, 2005 explained the rejection of independent claim 22 as follows:

a tray **a** & **b** having a bottom face that is adapted to be supported by an underlying surface and an upper portion as expressly shown in figures 1 and 3 and expressly discussed on the first page of that reference in lines 73-78; and

a plurality of pegs **c** or **d** extending outwardly from said upper face, each of said pegs being sized and arranged so as to be able to support a baby bottle as expressly shown in figures 1-4 and expressly discussed on the first page of that reference in lines 79-80 and on the second page lines 9-10,

mounting means for mounting said pegs to said tray so that said pegs are movable while mounted to said tray between a first storage position, wherein said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus and a second, operative position, wherein said peg is positioned so as to extend outwardly from said upper surface, so as to enable said peg to support an article, wherein said apparatus can conveniently be folded for packaging and storage purposes as expressly shown in figures 3 & 4 and expressly discussed on the first page of that reference in lines 17-28 and on the second page lines 21-26 and wherein said pegs are mounted to said tray in such a manner to allow packaging and storage as inherently disclosed on the first page lines 49-51 wherein the disclosed pegs **c** or **d** carried by bar **e** that fits within trough **a** which allows water from domestic articles is considered to anticipate the claimed tray mounted peg can be folded for the claimed intended use of packaging and storage because both allow article drying by configuring pegs upward for drying use and downward for packaging and/or storage; and

frictional means connected to said pegs for frictionally engaging said upper portion of said tray wherein said pegs are moved between said first storage position and said second operative position as inherently disclosed on the second page lines 17-20

since the claimed frictional means for language is not discussed in the specification in sufficient detail and wherein one skilled in the art would be able to make and/or use the claimed means for, based on the disclosed center of gravity because contact between two surfaces will axle connecting engagement thereby allowing a frictional means for the claimed intended use. Slipp is also considered to disclose the claimed means for imparting lateral stability to said pegs comprises at least one axle joining adjacent pegs together for common, ganged movement about a common axis of rotation as shown in figures 2' 4, location means for locking said axle in a rotational position that corresponds to said second operative position as expressly disclosed on page 1 lines 35-40, and location means comprises means, connected to said axle, for frictional engaging said upper surface of said tray as inherently disclosed on the second page lines 17-20 since the claimed frictional means for language is not discussed in the specification in sufficient detail and wherein one skilled in the art would be able to make and/or use the claimed means for, based on the disclosed center of gravity because contact between two surfaces will axle connecting engagement thereby allowing a frictional means for the claimed intended use.

Slipp et al. fails to make a *prima facie* case of anticipation for independent claim 22. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Among other things, claim 22 explicitly recites “said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus.” The Office Action states that “said apparatus can conveniently be folded for packaging and storage purposes” without providing any specific source for the statement in the Slipp et al. reference. Since the Office Action has referred to “figures 3 & 4” and “the first page of that reference in lines 17-28 and on the second page lines 21-26” for the same quoted claim language for the anticipatory rejection of claim 2, Appellant assumes that the same disclosure in the Slipp et al. reference is felt to be applicable to claim 4. Lines 17-28 of Slipp et al. generally disclose “two vertical folding side frames, hinged at the side of a trough.” In fact, Slipp et al. disclose the “horizontal bars e” which “fit snugly within the length of the trough (a) to the ends of which it is pivoted as indicated at f” as shown in FIGURES 1 and 3. The lines 21-26 of the Slipp et al. reference further disclose that the pegs c and d on the bars e are extended and folded as respectively illustrated in FIGURES 3 and 4. Although “the rack occupies a relatively small[er] space” in the folded position than the extended position, a significant portion of the pegs c and d remains above the trough (a) in the folded position. That is,

not the entire length of the pegs c and d is placed within the trough (a) or adjacent to the upper face of the tray as illustrated in FIGURE 4.

In contrast, independent claim 22 explicitly recites that “said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus [emphasis added].” As illustrated in FIGURE 2, the current invention as explicitly recited in independent claim 4 requires that an entire portion or length of the pegs be positioned “adjacent to said upper face” for the purpose of “storage and packaging of” the rack. With regard to the above structural requirement, the Slipp et al. reference discloses that only some portions of the pegs c and d are folded adjacent to the upper face, but significant other portions are not placed “adjacent” to the “upper face” of the tray. It appears from FIGURE 4 of the Slipp et al. reference that approximately a half of the length of the pegs c and d remains above the side wall of the trough (a) and the rotatable horizontal bar e. Thus, Appellant respectfully submits that the Slipp et al. reference fails to anticipate the above described patentable feature of the current invention as explicitly recited in independent claim 22.

In addition, independent claim 22 explicitly recites “frictional means connected to said pegs for frictionally engaging said upper portion of said tray when said pegs are moved between said first storage position and said second operative position.” In other words, the “frictional means” is “connected to said pegs” and “frictionally engage[es] said upper portion of the tray” as the “pegs are moved between” the two predetermined positions. With respect to the above quoted patentable feature of the invention, the Office Action states that “frictional means connected to said pegs for frictionally engaging said upper portion of said tray wherein said pegs are moved between said first storage position and said second operative position is inherently disclosed on the second page lines 17-20 since the claimed frictional means for language is not discussed in the specification in sufficient detail and wherein one skilled in the art would be able to make and/or use the claimed means for, based on the disclosed center of gravity because contact between two surfaces will axle connecting engagement thereby allowing a frictional means for the claimed intended use.” As already discussed above with respect to the section

112, Second Paragraph rejections, it is clear that the claim term, “frictional means” has been sufficiently described in the ‘784 patent.

The Office Action repeats that “Slipp is also considered to disclose the claimed means ... for frictional engaging said upper surface of said tray as inherently disclosed on the second page lines 17-20 since the claimed frictional means for language is not discussed in the specification in sufficient detail and wherein one skilled in the art would be able to make and/or use the claimed means for, based on the disclosed center of gravity because contact between two surfaces will axle connecting engagement thereby allowing a frictional means for the claimed intended use.” Lines 17-20 of the Slipp et al. reference disclose that “[t]he pins on both sides will remain in the vertical position until collapsed by hand, due to the action of gravity as herein before explained.” It may be true that the Slipp et al. reference implies some friction since “[e]ach of the bars e is made of length such that it can fit snugly within the length of the trough (a) to the ends of which it is pivoted as indicated at f” as disclosed in lines 83-86 of the first page and illustrated in FIGURE 1 or 2. However, independent claim 22 explicitly recites “frictional means ... for frictionally engaging said upper portion of said tray” [emphasis added]. This is clearly not disclosed in the reference.

The “upper portion of said tray” is the upper surface 16 of the tray 12 as disclosed in FIGURES 1 through 4. In the ‘784 patent, “the upper surface 16” is also interchangeably used with “the upper face 16” and “the top face 16.” But, the “upper portion of said tray” is never interchangeable with “an upstanding dam 34” or “a side wall 36” that “is formed along the periphery of the upper face 16” as defined at lines 55-60 in column 3 of the ‘784 patent. The implied friction at “the ends of” of the bars e in the Slipp et al. reference is made against the side wall of the trough (a) near an area indicated by the pivot f as illustrated in FIGURE 1. Clearly, the “upper portion of said tray” where the “friction means” of claim 22 engages is distinct from whatever hypothetical frictional area that may be suggested in the Slipp et al. reference. Thus, Appellant respectfully submits that the Slipp et al. reference fails to anticipate “frictional means ... for frictionally engaging said upper portion of said tray” of independent claim 22.

The frictional means recited in claim 22 must also be interpreted in light of Appellant's specification as required by the *In re Donaldson* decision. However, the Office Action fails to properly interpret the means-plus-function claim element because it does not take into account what the "frictional means" or its technical equivalent is as disclosed in the '784 patent. Instead, the Examiner has summarily concluded in an improper manner that "frictional means connected to said pegs for frictionally engaging said upper portion of said tray wherein said pegs are moved between said first storage position and said second operative position as inherently disclosed on the second page lines 17-20" of the Slipp et al. reference.

The proper means-plus-function claim construction under the §112(f) statutory requirements requires a careful examination of the disclosure in the '784 patent. Lines 29 through 37 in column 4 of the '784 patent describe the frictional means as amended by the response of July 11, 2002:

If it is desired to move the ring support member 32 from the second, operative position shown in FIG. 1 to the first storage position shown in FIG. 2, a user will push the ring support member 32 in the desired direction. Initially, this movement will be deterred by the frictional contact of the lower surface 44 and the leading edge 45 of the lower surface with the upper face 16 of tray 12. Once the leading edge 45 has cleared the upper surface, however, the ring support member 32 will easily fold down into the position that is shown in FIG 2.

Thus, the proper means-plus-function claim construction of the "frictional means" necessarily limits its scope to at least the "the lower surface 44 and the leading edge 45 of the lower surface with the upper face 16 of tray 12" and their technical equivalents. As discussed above, the upper face 16 is distinct from the side walls 36. In stark comparison, the Slipp et al. reference discloses no frictional contact involving the upper surface of the tray (a). Based upon the §112(f) statutory claim construction, Appellant respectfully submits that the Slipp et al. reference fails to anticipate the "frictional means ... for frictionally engaging said upper portion of said tray" as explicitly recited in claim 22.

Based upon the above-stated reasons, Appellant respectfully requests the Board to overturn the currently pending rejection of independent claim 22.

Dependent claims 23-26 and 29 ultimately depend from independent claim 22 and incorporate the “means for imparting lateral stability.”

Dependent claim 23 incorporates the patentable feature of independent claim 22 and additionally recites “no standing water may collect at locations where said pegs are mounted to said tray.” Therefore, Appellant submits that claim 23 is allowable for the reasons discussed above with regard to claim 22 and by virtue of the significant additional limitations that are set forth therein.

Dependent claim 24 incorporates the patentable feature of independent claim 22 and additionally recites “a cam member.” Therefore, Appellant submits that claim 24 is allowable for the reasons discussed above with regard to claim 22 and by virtue of the significant additional limitations that are set forth therein.

Dependent claim 25 incorporates the patentable feature of independent claim 22 and additionally recites “bear against a horizontal portion of said upper portion of said tray.” Therefore, Appellant submits that claim 25 is allowable for the reasons discussed above for independent claim 22, and by virtue of the significant additional limitations set forth therein.

Dependent claim 26 incorporates the patentable feature of independent claim 22 and additionally recites “locating means.” Therefore, Appellant submits that claim 26 is allowable for the reasons discussed above with regard to claim 22 and by virtue of the significant additional limitations that are set forth therein.

Dependent claim 29 incorporates the patentable feature of independent claim 22 and additionally recites “a second surface on said cam member.” Therefore, Appellant submits that claim 29 is allowable for the reasons discussed above with regard to claim 22 and by virtue of the significant additional limitations that are set forth therein.

For the reasons stated above, Appellant respectfully requests the Board to overturn the currently pending section 102 rejections of claims 22-26 and 29.

Issue 12: Have claims 19-21 been improperly rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 2,472,028 to Son ?

Claim 19 is the independent claim for rejected dependent claims 20 and 21 and is reproduced as follows for the convenience of the Examiners-in-Chief:

19. An apparatus for drying and storing an article, comprising:

a tray having a bottom face that is adapted to be supported by an underlying surface and an upper face;

bottle support means for supporting a baby bottle; and

disk holding means, connected to said upper face of said tray, for holding baby bottle disks in a location that is isolated from areas of said tray in which liquid may collect, whereby baby bottle disks are stored in a safe manner at a location that is convenient to a location at which baby bottles are being dried.

The Office Action limited its articulation of the rejection of independent claim 19 in the Office Action of November 22, 2005 as follows to a single sentence:

Claims 19-21 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Son (US 2,472,028).

The Office Action has not provided any other statements for what portion of U.S. Patent No. 2,472,028 to Son (hereinafter “the Son reference”) might disclose the recited elements of independent claim 19.

However a close review of the Son reference reveals that it fails to make a *prima facie* case of anticipation. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Among other things, independent claim 19 explicitly recites “bottle support means for supporting a baby bottle.” This means plus function claim limitation must be interpreted in light of the structure disclosed in the specification as required by the *In re Donaldson* decision. However, the Office Action has failed to do this. The Office Action fails to properly interpret the means-

plus-function claim element since it does not point out what the “bottle support means” or its technical equivalents are as disclosed in the ‘784 patent. Instead, the Office Action has summarily concluded in an improper manner that “bottle support means” is anticipated by the Son reference.

The proper means-plus-function claim construction under the §112¶6 statutory requirements requires a careful examination of the disclosure in the ‘784 patent. For example, lines 3-5 in column 3 of the ‘784 patent describes the bottle support means:

Each of the pegs 18 is sized and arranged so as to be able to support an article, such as a baby bottle, after washing and rinsing.

Thus, a proper means-plus-function claim construction of the “bottle support means” for examination purposes would limit its scope to at least the “the pegs 18” for supporting “a baby bottle” and technical equivalents of that structure. In stark comparison, the Son reference discloses “a plurality of space fingers 15” for supporting “hypodermic needles.” In fact, the Son reference is clearly limited in its disclosure to hypodermic needle packaging and sterilization because it specifies that “[w]hile a tray in accordance with my invention may be made solely for use in packaging hypodermic needles or in sterilizing them, in its preferred embodiment, it is adapted for both uses to provide maximum convenience in carrying them and in preparing them for use.” Son fails to disclose or even remotely suggest the use of baby bottles. Hypodermic needles such as those that are disclosed in the Son reference greatly differ in size, in shape and in their intended purpose from the “baby bottles” that are positively set forth in independent claim 19.

Particularly in light of the appropriate §112¶6 statutory claim construction that is required by the *In re Donaldson* decision, Appellant respectfully submits that the Son reference fails to anticipate the “bottle support means for supporting a baby bottle” as explicitly recited in claim 19.

In addition, independent claim 19 explicitly recites “disk holding means, connected to said upper face of said tray, for holding baby bottle disks in a location that is isolated from areas of said tray in which liquid may collect, whereby baby bottle disks are stored in a safe manner at a location that is convenient to a location at which baby bottles are being dried.” The Office Action clearly fails to properly interpret this means-plus-function claim element *In re Donaldson*

decision because it does not actively consider and point out what the “disk holding means” or its technical equivalent is as disclosed in the ‘784 patent. Instead, the Examiner has summarily concluded in an improper manner that “disk holding means” is anticipated by the Son reference.

The proper means-plus-function claim construction under the §112¶6 statutory requirements requires a careful examination of the disclosure in the ‘784 patent. Lines 39 through 53 in column 4 of the ‘784 patent describe the “disk holding system 50” with respect to FIGURE 1. The disk holding system 50 “hold[s] baby bottle disks in a location that is isolated from area of the tray 12 in which liquid may collect” and “includes an upstanding boss member 52 that projects upwardly from the upper face 16 of tray 12 and ... a plurality of disc receiving slots 54 defined therein.” Thus, an appropriate means-plus-function claim construction of the “disk holding means” is necessarily limited to the “disk holding system 50” that is disclosed in the specification and its technical equivalents. In stark comparison, the Son reference discloses only “a plurality of spaced fingers 15” and no other structure that is remotely related or equivalent to “disk holding means ... for holding baby bottle disks.” Based upon the appropriate §112¶6 statutory claim construction, Appellant respectfully submits that the Son reference fails to anticipate the “disk holding means” as it is set forth in claim 19.

Dependent claim 20 ultimately depends from independent claim 19 and incorporates the “disk holding means.” Dependent claim 20 additionally recites “an upstanding boss member.” Therefore, Appellant submits that claim 20 is allowable for the above reasons.

Dependent claim 21 depends from independent claim 18. Although the Examiner had rejected dependent claim 21 along with claims 19 and 20, it appears that the grouping appears inappropriate since the anticipated rejection of independent claim 18 is not even referenced with respect to the Son reference or the Slipp et al reference. Via a telephonic interview of May 13, 2006, the Examiner has now agreed that it would be proper to appeal the rejection of claim 21 in relation to the rejection of independent claim 18 under 35 U.S.C. §103.

For the reasons stated above, Appellant respectfully requests the Board to overturn the currently pending section 102 rejections of claims 19 and 20.

D. Rejection of Claims 10, 11, 12-18, 27, 28 and 30-34 Under §103 Based on a Combination of G.B. Patent No. 160,098 to Slipp et al., U.S. Patent No. 2,472,028 to Son, Swiss Patent CH 685,919 to Folini, U.S. Patent No. 5,492,237 to Chang and U.S. Patent No. 2,879,900 to Fox.

Issue 13: Has claim 10 been improperly rejected under 35 U.S.C. §103(a) as being obvious over G.B. Patent No. 160,098 to Slipp et al. in view of U.S. Patent No. 2,472,028 to Son?

Claim 10 is the dependent claim depending from independent claim 9 and incorporates the patentable features of independent claim 9.

Dependent claim 10 is reproduced as follows for the convenience of the Examiners-in-Chief:

10. An apparatus according to claim 9, wherein said disk holding means comprises an upstanding boss member that is raised from said upper face of said tray, and a plurality of disk-receiving slots defined in said boss member.

The Office Action of November 22, 2005 explained the rejection of independent claim 10 as follows:

Claim 10 is rejected under 35 U.S.C., 103(a) as being unpatentable over Slipp in view of Son. Slipp is considered to disclose the claimed invention, as rejected above, except for the claimed upstanding boss member that is raised from said upper face of said tray, and a plurality of disk-receiving slots defined in said boss member. Son, another apparatus for storing an article, is considered to disclose an upstanding boss member that is raised from said upper face of said tray, and a plurality of disk-receiving slots defined in said boss member in column 2 lines 30-35. It would have been obvious to one skilled in the art to combine the teachings of Slipp with the upstanding boss member that is raised from said upper face of said tray, and a plurality of disk-receiving slots defined in said boss member, considered expressly disclosed in Son, for the purpose of providing a supporting a disk portion of a baby bottle.

This rejection is clearly improper because the Son reference is nonanalogous prior art. It is legally impermissible to rely upon nonanalogous prior art in a §103 rejection. MPEP 2141.01(a) provides as follows:

2141.01(a) Analogous and Nonanalogous Art [R-2]

TO RELY ON A REFERENCE UNDER 35 U.S.C. 103, IT MUST BE ANALOGOUS PRIOR ART

The examiner must determine what is "analogous prior art" for the purpose of analyzing the obviousness of the subject matter at issue." In order to rely on a reference as a basis for rejection of an applicant's invention, the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." *In re Oetiker*, 977 F.2d 1443, 1446, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). See also *In re Deminski*, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986); *In re Clay*, 966 F.2d 656, 659, 23 USPQ2d 1058, 1060-61 (Fed. Cir. 1992) ("A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem."); * *Wang Laboratories Inc. v. Toshiba Corp.*, 993 F.2d 858, 26 USPQ2d 1767 (Fed. Cir. 1993)>; and *State Contracting & Eng'g Corp. v. Condotte America, Inc.*, 346 F.3d 1057, 1069, 68 USPQ2d 1481, 1490 (Fed. Cir. 2003) (where the general scope of a reference is outside the pertinent field of endeavor, the reference may be considered analogous art if subject matter disclosed therein is relevant to the particular problem with which the inventor is involved).

The Son reference discloses "a tray ... solely for use in packaging hypodermic needles or in sterilizing them, [and] in its preferred embodiment, it is adapted for both uses to provide maximum convenience in carrying them and in preparing them for use." The claimed invention is directed to drying baby bottles. To determine whether or not the above two fields of endeavor are analogous, "the reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned" according to *In re Oetiker*. It is glaringly apparent that Son's hypodermic needle tray is not even in the neighborhood in the field of applicant's field of endeavor of baby products. The Son reference fails to disclose or even remotely suggest the use of baby bottles. In any case, the hypodermic needles as disclosed in the Son reference are greatly different in size and in structure from the "baby bottles" that are recited in independent claim 9 and in dependent claim 10. Then, it becomes a question of whether or not the Son reference is "reasonably pertinent to the particular problem of" drying baby bottles with which "the inventor was concerned." Appellant respectfully submits that is self-evident that a packaging and sterilization tray for hypodermic needles is not reasonably pertinent to the particular problem of drying baby bottles and baby bottle accessories. The subject matter that is disclosed in the Son reference would not have commended itself to an

inventor's attention in the field of baby bottle drying racks. There is no suggestion provided in the reference for any alternative use of the Son article.

In other words, the Son reference has absolutely no pertinence to baby products, which is the field of Applicant's endeavor. It has no relevance to the particular problem with which the present inventors were involved. Accordingly, the Son reference is nonanalogous prior art to Appellant's invention and it is not legally permissible to use this reference as a basis for an obviousness rejection of Appellant's claim 10 under §103.

In addition to the above-discussed nonanalogous prior art issue, before teachings of the prior art references are combined, there must be some teaching or clear suggestion supporting the combination. *Gillette Co. v. S.C. Johnson & Sons, Inc.*, 919 F.2d 720, 723-24, 16 U.S.P.Q.2d 1923, 1926-27 (Fed. Cir. 1990); *Northern Telecom Inc. v. Datapoint Corp.*, 908 F.2d 931, 934-35, 15 U.S.P.Q.2d 1321, 1323 (Fed. Cir.), *cert. denied*, 111 S. Ct. 296 (1990). Absent such a suggestion, two or more references cannot render the invention obvious. There is no motivation, teaching or suggestion in either of the Son reference or the Slipp et al. reference for combining the two cited references, which again pertain to two completely different fields of endeavor.

Based upon the above reasons, the Son reference is improperly combined with the Slipp et al. reference. Accordingly, the §103 rejection that was applied to claim 10 is also improper for lack of suggestion to combine.

Moreover, even if the Son and Slipp et al. references are combined for the sake of argument, the combined disclosure would still fail to disclose, teach or suggest the claimed combination of elements that is specifically set forth in claim 10.

The Examiner concedes that the Slipp et al. reference fails to disclose "the claimed upstanding boss member that is raised from said upper face of said tray, and a plurality of disk-receiving slots defined in said boss member." Addressing the failure of the reference to disclose this claimed element, the Office Action has cited the Son reference at lines 30 through 35 in column 2: "I also form from the base a plurality of upwardly disposed tabs 19. Each of these

alines [sic] with one of the fingers 15 and is spaced therefrom a distance greater than the maximum length of a needle hub and each is preferably notched as at 20 to support a cannula 21.”

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 265 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Dependent claim 10 depends from independent claim 9 and incorporates all of the patentable features including “said disk holding means” of independent claim 9. As discussed above with respect to the rejection of independent claim 9 under 35 U.S.C. §102, the “disk holding means” holds “baby bottle disks” and is a separate structural element from the “pegs” that “support an article.” The phrase “disk holding means” must be interpreted in light of Appellant’s specification in accordance with the *In re Donaldson* decision. This means that the phrase must be interpreted as being limited to the “disk holding system 50” that is disclosed in the specification and technical equivalents thereof.

The Son reference discloses only “the fingers 15” and “the tabs 19” for respectively supporting “a needle hub 18” and “a cannula 21.” None of the other structure that is disclosed in the Son reference could reasonably be considered to be even remotely related to “disk holding means ... for holding baby bottle disks.” Based upon the appropriate §112(b) statutory claim construction, Appellant respectfully submits that the Slipp et al. reference and the Son reference even when combined fail to disclose, teach or suggest the “disk holding means” as explicitly recited in claim 10. Accordingly, claim 10 patentably defines over the prior art of record.

Furthermore, dependent claim 10 explicitly recites “said disk holding means comprises ... a plurality of disk-receiving slots defined in said boss member.” As discussed above, the cited references alone or in combination fail to disclose, teach or suggest the “disk holding means” as it is explicitly recited in claim 10. None of the references of record either alone or combination

disclose, teach or suggest “a plurality of disk-receiving slots” in a “disk holding means.” Although the Son reference discloses the tabs 19, which each have a notch 20, the tabs 19 “support a cannula 21” and not “baby bottle disks” as explicitly called for by independent claim 9 and accordingly by dependent claim 10. Baby bottle disks and cannulas for hypodermic needles are structurally and functionally different. Since these two radically different objects have no commonality and are from completely different fields of endeavor, the disclosure of one cannot reasonably be considered to be a disclosure of the other. For all of the reasons discussed above, Appellant respectfully requests the Board to overturn the currently pending §103 rejection of claim 10.

Issue 14: Has claim 11 been improperly rejected under 35 U.S.C. §103(a) as being obvious over G.B. Patent No. 160,098 to Slipp et al. in view of Swiss Patent CH 685,919 to Folini?

Claim 11 is an independent claim and is reproduced as follows for the convenience of the Examiners-in-Chief:

11. An apparatus for storing an article, comprising:

 a tray having a bottom face that is adapted to be supported by an underlying surface, and an upper face; and

 a plurality of pegs extending outwardly from said upper face, each of said pegs being sized and arranged so as to be able to support an article,

 a plurality of ring support members that are constructed and arranged to support a ring portion of a baby bottle;

 and wherein each of said pegs are permanently mounted to said tray in such a manner as to be movable between a first storage position, wherein said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus, and a second, operative position, wherein said peg is positioned so as to extend outwardly from said upper surface, so as to enable said peg to support an article, wherein said apparatus can conveniently be folded for packaging and storage purposes.

The Office Action of November 22, 2005 explained the rejection of independent claim 11 as follows:

Claim 11 is rejected under 35 U.S.C 103(a) as being unpatentable over Slipp in view of Folini (CH 685,919). Slipp is considered to disclose the claimed invention, as rejected above, except for the claimed plurality of ring support members that are constructed and arranged to support a ring portion of a baby bottle. Folini, another apparatus for storing an article, is considered to disclose a plurality of ring support members that are constructed and arranged to support a ring portion of a baby bottle at the fourth paragraph of the third translated page of that reference and as shown in figures 1 and 2. It would have been obvious to one skilled in the art to combine the teachings of Slipp with the plurality of ring support members that are constructed and arranged to support a ring portion of a baby bottle, considered expressly disclosed in Folini, for the purpose of providing a supporting a ring portion of a baby bottle.

The Office Action concedes that the Slipp et al. reference fails to disclose a “plurality of ring support members.” For the lack of the above disclosure, the Examiner has cited the fourth paragraph of the third translated page and FIGURES 1 and 2 of Swiss Patent CH 685,919 to Folini (hereinafter the Folini reference). The translated fourth paragraph reads:

Fig. 1 shows a diagram of a device for storing one baby bottle set. It has a rectangular base tray 2 with a raised edge 4 around its entire periphery. In one corner of this raised edge, there is a drip or draining duct 6. Arranged in rectangular fashion on the base tray are a long, slender rod 8 on which the baby bottle 10 is supported, a cone shaped rod stump 12 designed to hold a locking ring 14, a short rod 16 for the mouthpiece or nipple 18, as well as a cam 20 with a slot 22 into which a bottle lid 24 can be inserted.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 265 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. §103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Among other things, independent claim 11 explicitly recites “said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus.” With respect to the above quoted patentable feature of the invention, the Examiner has simply stated in the Office Action that “Slipp is considered to disclose the claimed invention” without any detail. As Appellant has already discussed above for the anticipation rejection that was applied to claim 2, the Office Action has identified Figures 3 and 4 and lines 17-28 on the first page and lines 21-26 on the second page of the Slipp et al. reference as being pertinent to the rejection. Lines 17-28 of

the Slipp et al. reference generally disclose “two vertical folding side frames, hinged at the side of a trough.” Lines 21-26 of the Slipp et al. reference further disclose that the pegs c, d on the bars e are extended and folded as respectively illustrated in FIGURES 3 and 4. Although “the rack occupies a relatively small[er] space” in the folded position than the extended position, a significant portion of the pegs c and d remains above the trough (a) in the folded position. That is, the entire length of the pegs c and d is not adjacent to the trough (a) or the upper face of the tray as illustrated in FIGURE 4 when the article is in the storage position.

In sharp contrast, independent claim 11 explicitly recites that “said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus [emphasis added].” As illustrated in FIGURE 2, the present invention as it is set forth in claim 11 is configured so that the entire length of the pegs will be positioned “adjacent to said upper face” for the purpose of “storage and packaging of” the rack. With regard to the above structural requirement, the Slipp et al. reference discloses that only some portions of the pegs c and d are folded adjacent to the upper portion, but significant other portions are not placed “adjacent” to the “upper face” of the tray. It appears from FIGURE 4 of the Slipp et al. reference that approximately half of the length of the pegs c and d will remain above the side wall of the trough (a) and the rotatable horizontal bar e when the rack is in the storage position.

The Folini reference discloses a storage device for storing a baby bottle set. A preferred embodiment of the storage device includes three rods and a cam. The rods 8, 16 and 12 respectively support a baby bottle 10, a mouth piece or nipple 18 and a locking ring 14 while the cam 20 supports a bottle lid 24. None of the rods 8, 16 and 12 and the cam 20 is movable, and each of these structures remains at a predetermined fixed position. There is no suggestion or disclosure provided anywhere in the Folini reference that it would be advantageous for the rods 8, 16, 12 to be positioned so that their entire length is adjacent to an upper face of a tray for storage purposes. Accordingly, any combination of the Slipp et al. reference and the Folini reference would fall short of meeting the limitations that are set forth in independent claim 11, namely that the entire length of the pegs are positioned adjacent to the upper surface of the tray for storage purposes. For these reasons, the claimed combination of elements in claim 11 would not have been

obvious to one of ordinary skill in the art based upon the proposed combination of Slipp et al. and Folini.

Therefore, Appellant respectfully requests the Board to overturn the currently pending §103 rejection of claim 11.

Issue 15: Have claims 12-17 been improperly rejected under 35 U.S.C. §103(a) as being obvious over G.B. Patent No. 160,098 to Slipp et al. in view of Swiss Patent CH 685,919 to Folini and in further view of U.S. Patent No. 5,492,237 to Chang?

Dependent claims 12-17 depend from independent claim 11 and incorporate the patentable features of independent claim 11.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 265 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

With respect to Issue 14, Appellant has already pointed out that independent claim 11 explicitly recites patentable features of “said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus.” As discussed above, these patentable features of the current invention are not disclosed in either the Slipp et al. reference or the Folini reference.

For the rejections of dependent claims 12-17, the Office Action relies upon U.S. Patent No. 5,492,237 to Chang (hereinafter the Chang reference) in combination with the Slipp et al. reference and the Folini reference. The Chang reference discloses an “expandable and retractable multiple article drying rack.” As illustrated in FIGURES 1 through 4 of the reference, the rack 10 includes a base assembly 12 having end support members 20 that are flexibly expanded or retracted at various positions via joints or rotary connectors 24. The base assembly 12 has only the connected arms 20 and lacks a tray. The posts 14, rods 16 and fingers 18 are vertically mounted

on the base assembly 12 for supporting baby bottles. Although the fingers 18 can be tilted to a certain angle with respect to the base assembly 12, the movable range of these elements is limited. The posts 14, rods 16 and fingers 18 cannot be manipulated so that their entire length is adjacent to the upper surface of a tray, as independent claim 11 requires. The posts 14 and the rods 16 lack any mobility with respect to the base assembly 12.

As stated above, independent claim 11 explicitly recites that “said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus.” Due to the limited range of motion, the fingers 18 cannot be placed “adjacent to” the tray. In any case, since the Chang reference lacks a tray, the fingers 18 are never placed adjacent to the tray. In addition, “for storage and packaging of said apparatus,” the base assembly 12 is placed at the retracted position as illustrated in FIGURE 4, and the vertically placed posts 14 and rods 16 are also not “positioned adjacent to said upper face” of the tray. Thus, the Chang reference fails to disclose, teach or suggest that “said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus” as explicitly recited in independent claim 11.

The applied references do not address the exact issue of positioning “said entire peg ...adjacent to said upper face for storage and packing [emphasis added]” of the rack. The current invention is distinct in that the rack is advantageously more compact for “storage and packing” as explicitly recited in independent claim 11. The Slipp et al. reference fails to teach, disclose or suggest how the remaining portions of the peg c and d above the trough (a) can be placed adjacent to the trough (a) to improve “storage and packing.” Let alone, the Folini reference entirely lacks the concept of the movable pegs. Similarly, the Chang reference also lacks the concept of the movable pegs except for a movable peg 18, whose range of motion is too limited to be placed “adjacent” to the upper face. For these reasons, it would not have been obvious to one of ordinary skill to place the “entire” peg adjacent to the tray surface based upon the cited references. Therefore, Appellant respectfully submits that the above described patentable feature of the current invention as explicitly recited in independent claim 11 is not taught, disclosed or suggested in view of the Slipp et al. reference, the Folini reference or the Chang reference alone or in combination.

Dependent claims 12-17 depend from independent claim 11 and incorporate the above discussed patentable features of independent claim 11.

Dependent claim 12 incorporates the above discussed patentable features of independent claim 11 and additionally requires “a stop member for supporting a ring member...” As noted above with respect to claim 11, none of the Slipp et al. reference, the Folini reference or the Chang reference discloses or suggests the placement of the entire peg adjacent to the upper surface of the tray. Appellant submits that claim 12 further defines over the prior art of record by virtue of this additional limitation.

Dependent claim 13 incorporates the above discussed patentable features of independent claim 11 and additionally requires that “said ring support members are mounted to said tray in such a manner as to be movable between a first storage position ... and a second, operative position....” As noted above with respect to claim 11, none of the Slipp et al. reference, the Folini reference or the Chang reference discloses or suggests the placement of the entire peg adjacent to the upper surface of the tray. Appellant submits that claim 13 further defines over the prior art of record because of the additional limitations contained therein.

Dependent claim 14 incorporates the above discussed patentable features of independent claim 11 and additionally requires that “said ring support members are mounted to said tray in such a manner as to be movable only about a single axis of rotation.” As noted above with respect to claim 11, none of the Slipp et al. reference, the Folini reference or the Chang reference discloses or suggests the placement of the entire peg adjacent to the upper surface of the tray. Appellant submits that claim 14 further defines over the prior art of record because of the significant additional limitations contained therein.

Dependent claim 15 incorporates the above discussed patentable features of independent claim 11 and additionally requires “means for imparting lateral stability to said ring support members...” As noted above with respect to claim 11, none of the Slipp et al. reference, the Folini reference or the Chang reference discloses or suggests the placement of the entire peg

adjacent to the upper surface of the tray. Appellant submits that claim 15 further defines over the prior art of record because of the significant additional limitations contained therein.

Dependent claim 16 incorporates the above discussed patentable features of independent claim 11 and additionally requires that “said means for imparting lateral stability to said ring support members comprises at least one axle joining adjacent ring support members...” As noted above with respect to claim 11, none of the Slipp et al. reference, the Folini reference or the Chang reference discloses or suggests the placement of the entire peg adjacent to the upper surface of the tray. Appellant submits that claim 16 further defines over the prior art of record because of the significant additional limitations contained therein.

Dependent claim 17 incorporates the above discussed patentable features of independent claim 11 and additionally requires “location means for locking said axle...” As noted above with respect to claim 11, none of the Slipp et al. reference, the Folini reference or the Chang reference discloses or suggests the placement of the entire peg adjacent to the upper surface of the tray. Therefore, Appellant submits that claim 17 further defines over the prior art of record because of the significant additional limitations contained therein.

Based upon the above reasons, Appellant respectfully requests the Board to overturn the currently pending §103 rejections of claims 12-17.

Issue 16: Have claims 27 and 28 been improperly rejected under 35 U.S.C. §103(a) as being obvious over G.B. Patent No. 160,098 to Slipp et al. in view of Swiss Patent CH 685,919 to Folini and in further view of U.S. Patent No. 5,492,237 to Chang?

Dependent claims 27 and 28 ultimately depend from independent claim 22 and incorporate the patentable features of independent claim 22.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 265 USPQ 494, 496 (CCPA 1970). If an

independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Dependent claim 27 depends from independent claim 22 and incorporates all of the patentable features set forth therein including the “pegs” and “frictional means” that have been discussed above. As discussed above with respect to Issue 11 for the rejection of independent claim 22 under 35 U.S.C. §102, among other things, independent claim 22 explicitly recites “said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus.” With respect to the above quoted patentable feature of the invention, the Examiner has stated in the Office Action that “said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus and a second, operative position, wherein said peg is positioned so as to extend outwardly from said upper surface, so as to enable said peg to support an article, wherein said apparatus can conveniently be folded for packaging and storage purposes as expressly shown in Figures 3 & 4 and expressly discussed on the first page of that reference in lines 17-28 and on the second page lines 21-26” of the Slipp et al. reference. Lines 17-28 generally disclose “two vertical folding side frames, hinged at the side of a trough.” Lines 21-26 further disclose that the pegs c, d on the bars e are extended and folded as respectively illustrated in FIGURES 3 and 4. Although “the rack occupies a relatively small[er] space” in the folded position than the extended position, a significant portion of the pegs c and d remains above the trough (a) in the folded position. That is, the Slipp et al. reference discloses that only some portions of the pegs c and d are folded adjacent to the upper portion, but significant other portions are not placed “adjacent” to the “upper portion” of the tray. It appears from FIGURE 4 of the Slipp et al. reference that approximately a half of the length of the pegs c and d remain above the side wall of the trough (a) and the rotatable horizontal bar e when the apparatus is in the folded or storage position.

The Chang reference discloses an “expandable and retractable multiple article drying rack.” As illustrated in FIGURES 1 through 4, the rack 10 includes a base assembly 12 having end support members 20 that are flexibly expanded or retracted at various positions via joints or rotary connectors 24. The base assembly 12 has only the connected arms 20 and lacks a tray. The posts

14, rods 16 and fingers 18 are vertically mounted on the base assembly 12 for supporting baby bottles. Although the fingers 18 can be tilted to a certain angle with respect to the base assembly, the movable range of the angle is too limited to place the fingers 18 adjacent to the base assembly 12. Other supporting structures, the posts 14 and the rods 16 lack any mobility with respect to the base assembly 12.

The Folini reference discloses a storage device for storing a baby bottle set. A preferred embodiment of the storage device includes three rods and a cam. The rods 8, 16 and 12 respectively support a baby bottle 10, a mouth piece or nipple 18 and a locking ring 14 while the cam 20 supports a bottle lid 24. None of the rods 8, 16 and 12 and the cam 20 is movable, and each of these structures remains at a predetermined fixed position.

Appellant's independent claim 22 explicitly recites that "said entire peg is positioned adjacent to said upper portion for storage and packaging of said apparatus [emphasis added]." The applied references do not disclose or suggest in any way positioning "said entire peg ...adjacent to said upper portion for storage and packing [emphasis added]" of the rack. The Slipp et al. reference fails to teach, disclose or suggest how the entire length of the peg c and d above the trough (a) can be placed adjacent to the trough (a) to improve "storage and packing." The Folini reference entirely lacks the concept of the movable pegs. Similarly, the Chang reference also lacks the concept of the movable pegs except for a movable peg 18, whose range of motion is too limited to be placed "adjacent" to the upper portion of a tray. Accordingly, the three references when combined in the proposed §103 rejection would still fail to yield an apparatus that would satisfy the limitations of independent claim 22. For this reason, it would not have been obvious to one of ordinary skill to place the "entire" peg adjacent to the tray surface based upon the cited references.

In addition, independent claim 22 explicitly recites "frictional means connected to said pegs for frictionally engaging said upper portion of said tray when said pegs are moved between said first storage position and said second operative position." In other words, the "frictional means" is "connected to said pegs" and "frictionally engage[es] said upper portion of the tray" as the "pegs are moved between" the two predetermined positions. With respect to the above

quoted patentable feature of the invention, the Office Action has stated with respect to the §102 rejection that “Slipp is also considered to disclose the claimed means ... for frictional engaging said upper surface of said tray as inherently disclosed on the second page lines 17-20 since the claimed frictional means for language is not discussed in the specification in sufficient detail and wherein one skilled in the art would be able to make and/or use the claimed means for, based on the disclosed center of gravity because contact between two surfaces will axle connecting engagement thereby allowing a frictional means for the claimed intended use.” The lines 17-20 of the Slipp et al. reference disclose that “[t]he pins on both sides will remain in the vertical position until collapsed by hand, due to the action of gravity as herein before explained.” It may be true that the Slipp et al. reference implies some friction since “[e]ach of the bars e is made of length such that it can fit snugly within the length of the trough (a) to the ends of which it is pivoted as indicated at f” as disclosed in lines 83-86 of the first page and illustrated in FIGURE 1 or 2. However, independent claim 22 explicitly recites “frictional means ... for frictionally engaging said upper portion of said tray” [emphasis added]. This limitation is clearly not met by the reference.

The “upper portion of said tray” is the upper surface 16 of the tray 12 as disclosed in FIGURES 1 through 4. In the ‘784 patent, “the upper surface 16” is also interchangeably used with “the upper face 16” and “the top face 16.” But, the “upper portion of said tray” is never interchangeable with “an upstanding dam 34” or “a side wall 36” that “is formed along the periphery of the upper face 16” as defined at lines 55-60 in column 3 of the ‘784 patent. The implied friction at “the ends of” of the bars e in the Slipp et al. reference is made against the side wall of the trough (a) near an area indicated by the pivot f as illustrated in FIGURE 1. Clearly, the “upper portion of said tray” where the “friction means” of claim 22 engages is distinct from the implied frictional area disclosed by the Slipp et al. reference.

In this regard, the Folini reference discloses a storage device for storing a baby bottle set. A preferred embodiment of the storage device includes three rods and a cam. The rods 8, 16 and 12 respectively support a baby bottle 10, a mouth piece or nipple 18 and a locking ring 14 while the cam 20 supports a bottle lid 24. None of the rods 8, 16 and 12 and the cam 20 is movable, and

each of these structures remains at a predetermined fixed position without frictionally engaging any area.

Similarly, the Chang reference discloses an “expandable and retractable multiple article drying rack.” As illustrated in FIGURES 1 through 4, the rack 10 includes a base assembly 12 having end support members 20 that are flexibly expanded or retracted at various positions via joints or rotary connectors 24. The base assembly 12 has only the connected arms 20 and lacks a tray. The posts 14, rods 16 and fingers 18 are vertically mounted on the base assembly 12 for supporting baby bottles. Although the fingers 18 can be tilted to a certain angle with respect to the base assembly, the movable range of the angle is limited. Other supporting structures, the posts 14 and the rods 16 lack any mobility with respect to the base assembly 12. In any case, none of these supporting structures frictionally engages any area of the rack. The base assembly lacks a tray. Thus, Appellant respectfully submits that the Slipp et al., Folini and Chang references alone or in combination necessarily fail to disclose, teach or suggest “frictional means ... for frictionally engaging said upper portion of said tray” as is set forth in independent claim 22.

Lastly, as the CAFC has long established, the proper interpretation of a means-plus-function claim for examination purposes under 35 U.S.C. §112, Sixth Paragraph (herein after §112¶6) is limited to the corresponding structure disclosed in the specification and reasonable equivalents in accordance with the *In re Donaldson* decision. It was concluded above with respect to Issue 11 that a proper means-plus-function claim construction of the “frictional means” necessarily limits its scope to at least the “the lower surface 44 and the leading edge 45 of the lower surface with the upper face 16 of tray 12” and their technical equivalents. In contrast, as described above, the Slipp et al. reference discloses no frictional contact involving the upper surface of the trough (a). The Folini reference discloses that none of the rods 8, 16 and 12 and the cam 20 is movable, and each of these structures remains at a predetermined fixed position without engaging “said upper portion of said tray.” Similarly, the Chang reference discloses that none of the supporting structures 14, 16 and 18 engaging “said upper portion of said tray.” Based upon the proper §112¶6 statutory claim construction, Appellant respectfully submits that the Slipp et al., Folini and Chang references

either alone or in combination necessarily fail to teach, disclose or suggest the “frictional means ... for frictionally engaging said upper portion of said tray” as it is explicitly recited in claim 22.

For the above reasons, it would not have been obvious to provide the patentable features of independent claim 22 and dependent claim 27. Therefore, Appellant submits that claim 27 is allowable and respectfully requests the rejections that have been applied in the Office Action to be overturned.

Dependent claim 28 incorporates the above discussed patentable features of independent claim 22 and additionally requires “said cam stop surface is elevated with respect to said upper portion of said tray.” As noted above with respect to claim 22, none of the Slipp et al. reference, the Folini reference or the Chang reference discloses or suggests the patentable features of claim 22. Therefore, Appellant submits that claim 28 is allowable for this additional reason.

Based upon the above reasons, Appellant respectfully requests the Board to overturn the currently pending §103 rejections of claims 27 and 28.

Issue 17: Have claims 18 and 21 been improperly rejected under 35 U.S.C. §103(a) as being obvious over G.B. Patent No. 160,098 to Slipp et al. in view of U.S. Patent No. 2,879,900 to Fox?

Claim 18 is an independent claim and is reproduced as follows for the convenience of the Examiners-in-Chief:

18. An apparatus for storing an article, comprising:

a tray having a bottom face that is adapted to be supported by an underlying surface, and an upper face; and

a plurality of pegs extending outwardly from said upper face, each of said pegs being sized and arranged so as to be able to support an article,

a cutout area on a side of said apparatus for facilitating lifting of said apparatus by a user; and wherein

each of said pegs are permanently mounted to said tray in such a manner as to be movable between a first storage position, wherein said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus, and a second,

operative position, wherein said peg is positioned so as to extend outwardly from said upper surface, so as to enable said peg to support an article, wherein said apparatus can conveniently be folded for packaging and storage purposes.

The Office Action of November 22, 2005 explained the rejection of independent claim 18 as follows:

Slipp is considered to disclose the claimed invention, as rejected above, except for the claimed cutout area on a side for facilitating lifting by a user. Fox, another apparatus for storing an article, is considered to disclose a cutout area on a side for facilitating lifting by a user at column 3 lines 36-50 wherein the disclosed cutout is considered to meet the claimed cutout function because both allow a cutout region shaped to facilitate lifting. It would have been obvious to one skilled in the art to combine the teachings of Slipp with the cutout area on a side for facilitating lifting by a user, considered inherently disclosed in Fox, for the purpose of providing a lifting an article

The Office Action concedes that the Slipp et al. reference fails to disclose a “cutout area.” For the lack of the above disclosure, the Examiner has cited lines 36-50 in column 3 of U.S. Patent No. 2,879,900 to Fox (herein after the Fox reference). The cited portion of the Fox reference discloses a cutout area 12 as illustrated in FIGURES 3.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 265 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Among other things, independent claim 18 explicitly recites “said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus.” With respect to this limitation, the Office Action states that “Slipp is considered to disclose the claimed invention” without any detail. As already discussed for the §102 anticipation rejection of claim 2, the Office Action has identified Figures 3 and 4 and lines 17-28 on the first page and lines 21-26 on the second page of the Slipp et al. reference as being pertinent to the rejection. Lines 17-28 of the Slipp et al. reference generally disclose “two vertical folding side frames, hinged at the side of a trough.” Lines 21-26 of the Slipp et al. reference further disclose that the pegs c, d on the bars e

are extended and folded as respectively illustrated in FIGURES 3 and 4. Although “the rack occupies a relatively small[er] space” in the folded position than the extended position, a significant portion of the pegs c and d remains above the trough (a) in the folded position. That is, the Slipp et al. reference discloses that only some portions of the pegs c and d are folded adjacent to the upper portion, but significant other portions are not placed “adjacent” to the “upper face” of the tray. It appears from FIGURE 4 of the Slipp et al. reference that approximately a half of the length of the pegs c and d will remain above the side wall of the trough (a) and the rotatable horizontal bar e when the article is in the folded or storage position.

The Fox reference discloses a drying rack for drying bottles. A preferred embodiment of the drying device includes rods 15 on a sloped wall 13. None of the rods 15 is movable, and each of these structures remains at a predetermined fixed position.

Appellant’s independent claim 18 explicitly recites that “said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus [emphasis added].”

The cited references do not disclose or suggest in any way positioning “said entire peg ...adjacent to said upper face for storage and packing [emphasis added]” of the rack. The current invention is distinct in that the rack is advantageously more compact for “storage and packing” as explicitly recited in independent claim 18. The Slipp et al. reference fails to teach, disclose or suggest how the remaining portions of the peg c and d above the trough (a) can be placed adjacent to the trough (a) to improve “storage and packing.” The Fox reference entirely lacks the concept of the movable pegs. Accordingly, the proposed combination of references would be incapable of providing an apparatus that would meet the limitations of independent claim 18. Thus, Appellant’s invention as it is set forth in claim 18 would not have been obvious to one of ordinary skill in the art based upon the proposed combination of the Slipp et al. and Fox references. Again, neither of the cited references teaches, discloses or suggests that “said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus [emphasis added]” as independent claim 18 requires. For this reason, Appellant respectfully requests the Board to overturn the §103 rejection that has been applied to claim 18.

Dependent claim 21 depends from independent claim 18 and incorporates the above discussed patentable features of independent claim 18. Although the Examiner had rejected claim 21 as allegedly being anticipated by the Son reference, the Examiner had not rejected its independent claim 18 under 35 U.S.C. §102. In a telephonic conference that was held on May 12, 2006, the Examiner has agreed that the dependent claim 21 should be considered rejected under §103 together with independent claim 18 based on the proposed combination of the Slipp et al. reference and the Fox reference. Appellant respectfully submits that claim 21 patentably defines over the prior art of record for the reasons set forth above in regard to independent claim 18, and because of the significant additional limitations that are set forth therein.

Issue 18: Have claims 30 and 31 been improperly rejected under 35 U.S.C. §103(a) as being obvious over G.B. Patent No. 160,098 to Slipp et al. in view of U.S. Patent No. 2,879,900 to Fox?

Dependent claims 30 and 31 ultimately depend from independent claim 22 and incorporate the patentable features of independent claim 22.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 265 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Dependent claim 30 depends from independent claim 22 and incorporates all of the patentable features that are set forth in that claim including the “pegs” and the “frictional means” that have been discussed above. As discussed above with respect to Issue 11 for the rejection of independent claim 22 under 35 U.S.C. §102, among other things, independent claim 22 explicitly recites “said entire peg is positioned adjacent to said upper portion for storage and packaging of said apparatus.” With respect to this limitation, the Office Action states that “said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus and a second,

operative position, wherein said peg is positioned so as to extend outwardly from said upper surface, so as to enable said peg to support an article, wherein said apparatus can conveniently be folded for packaging and storage purposes as expressly shown in Figures 3 & 4 and expressly discussed on the first page of that reference in lines 17-28 and on the second page lines 21-26” of the Slipp et al. reference. Lines 17-28 generally disclose “two vertical folding side frames, hinged at the side of a trough.” Lines 21-26 further disclose that the pegs c, d on the bars e are extended and folded as respectively illustrated in FIGURES 3 and 4. Although “the rack occupies a relatively small[er] space” in the folded position than the extended position, a significant portion of the pegs c and d remains above the trough (a) in the folded position. That is, the Slipp et al. reference discloses that only some portions of the pegs c and d are folded adjacent to the upper portion, but significant other portions are not placed “adjacent” to the “upper portion” of the tray. It appears from FIGURE 4 of the Slipp et al. reference that approximately a half of the length of the pegs c and d will remain above the side wall of the trough (a) and the rotatable horizontal bar e when the apparatus is in the folded or storage position.

The Fox reference discloses a drying rack for drying bottles. A preferred embodiment of the drying device includes rods 15 on a sloped wall 13. None of the rods 15 is movable, and each of these structures remains at a predetermined fixed position.

Appellant's independent claim 22 explicitly recites that “said entire peg is positioned adjacent to said upper portion for storage and packaging of said apparatus [emphasis added].” This limitation is clearly not met by the proposed combination of references. The Slipp et al. reference fails to teach, disclose or suggest how the remaining portions of the peg c and d above the trough (a) can be placed adjacent to the trough (a) to improve “storage and packing.” The Fox reference entirely lacks the concept of the movable pegs. Accordingly, any combination of the two references would likewise fail to disclose pegs that have their entire length positioned adjacent to the upper portion of the tray. For this reason, it would not have been obvious to one of ordinary skill in the art to provide the current invention as it is set forth in dependent claim 22 or in claim 30 based upon the Slipp et al. and Fox references alone or in combination.

In addition, independent claim 22 explicitly recites “frictional means connected to said pegs for frictionally engaging said upper portion of said tray when said pegs are moved between said first storage position and said second operative position.” In other words, the “frictional means” is “connected to said pegs” and “frictionally engage[es] said upper portion of the tray” as the “pegs are moved between” the two predetermined positions. With respect to this claim limitation, the Office Action states that “Slipp is also considered to disclose the claimed means ... for frictional engaging said upper surface of said tray as inherently disclosed on the second page lines 17-20 since the claimed frictional means for language is not discussed in the specification in sufficient detail and wherein one skilled in the art would be able to make and/or use the claimed means for, based on the disclosed center of gravity because contact between two surfaces will axle connecting engagement thereby allowing a frictional means for the claimed intended use.” Lines 17-20 of Slipp et al. disclose that “[t]he pins on both sides will remain in the vertical position until collapsed by hand, due to the action of gravity as herein before explained.” It may be true that the Slipp et al. reference implies some friction since “[e]ach of the bars c is made of length such that it can fit snugly within the length of the trough (a) to the ends of which it is pivoted as indicated at f” as disclosed in lines 83-86 of the first page and illustrated in FIGURE 1 or 2. However, independent claim 22 explicitly recites “frictional means ... for frictionally engaging said upper portion of said tray” [emphasis added]. This limitation is clearly not meant by the reference. The “upper portion of said tray” is the upper surface 16 of the tray 12 as disclosed in FIGURES 1 through 4. In the ‘784 patent, “the upper surface 16” is also interchangeably used with “the upper face 16” and “the top face 16.” But, the “upper portion of said tray” is never interchangeable with “an upstanding dam 34” or “a side wall 36” that “is formed along the periphery of the upper face 16” as defined at lines 55-60 in column 3 of the ‘784 patent. The implied friction at “the ends of” of the bars e in the Slipp et al. reference is made against the side wall of the trough (a) near an area indicated by the pivot f as illustrated in FIGURE 1. Clearly, the “upper portion of said tray” where the “friction means” of claim 22 engages is distinct from the implied frictional area that may be disclosed by the Slipp et al. reference. The Fox reference discloses a drying rack for drying bottles. A preferred embodiment of the drying device includes rods 15 on a sloped wall 13. None of the rods 15 is

movable, and each of these structures remains at a predetermined fixed position. Accordingly, the proposed combination of references would fail to yield Appellant's invention as it is set forth in claim 22.

Appellant would also like to point out that the means plus function limitation must be interpreted in light of the *In re Donaldson* decision, meaning that the limitation must be construed as being limited to the corresponding structure disclosed in the specification plus reasonable equivalents. It was concluded above with respect to Issue 11 that one proper means-plus-function claim construction of the “frictional means” necessarily limits its scope to at least the “the lower surface 44 and the leading edge 45 of the lower surface with the upper face 16 of tray 12” and their technical equivalents. The Slipp et al. reference discloses or suggests no corresponding structure, and no frictional contact involving the upper surface of the trough (a). In this regard, the Fox reference discloses that none of the rods is movable, and each of these structures remains at a predetermined fixed position without engaging “said upper portion of said tray.” Based upon the appropriate §112(b) statutory claim construction, Appellant respectfully submits that the Slipp et al. and Fox references alone or combination fail to teach, disclose or suggest the “frictional means ... for frictionally engaging said upper portion of said tray” as explicitly recited in claim 22.

For the above reasons, it would not have been obvious to provide the patentable features of independent claim 22 and dependent claim 30, which adds substantial additional limitations that are not disclosed by the references in combination with the elements that are articulated in claim 22. Therefore, Appellant submits that claim 30 is allowable, and the rejection thereof should be overturned.

Dependent claim 31 incorporates the above-discussed patentable features of independent claim 22 and additionally requires “said cutout area is positioned beneath said one end of said upper portion.” As noted above with respect to claim 22, neither of the Slipp et al. reference and the Fox reference discloses or suggests the patentable features of claim 22. Therefore, Appellant submits that claim 31 is allowable for this reason, and because of the additional limitations that are set forth therein.

For the reasons stated above, Appellant respectfully requests the Board to overturn the §103 rejections of claims 30 and 31 that have been applied in the Office Action.

Issue 19: Have claims 32-34 been improperly rejected under 35 U.S.C. §103(a) as being obvious over G.B. Patent No. 160,098 to Slipp et al. in view of U.S. Patent No. 2,879,900 to Fox?

Claim 32 is the independent claim for dependent claims 33, 34 and is reproduced as follows for the convenience of the Examiners-in-Chief:

32. An apparatus for supporting baby bottles for drying, comprising:

a tray having a bottom that is adapted to be supported by an underlying surface and an upper face, said upper face of said tray being oriented with respect to said bottom so that one end of said upper face is lower than an opposite end so that water will run toward said one end during use; and

a plurality of pegs extending outwardly from said upper face, each of said pegs being sized and arranged so as to be able to support an article, said pegs being positioned away from the edges of said upper face, whereby any water falling off of an article that is supported by any of said pegs will fall within said tray, and wherein

each of said pegs are permanently mounted to said tray in such a manner as to be movable between a first storage position, wherein said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus, and a second, operative position, wherein said peg is positioned so as to extend outwardly from said upper surface, so as to enable said peg to support an article, wherein said apparatus can conveniently be folded for packaging and storage purposes.

The Office Action of November 22, 2005 explained the rejection of independent claim 32 as follows:

Slipp is considered to disclose the claimed invention, as rejected above, except for the claimed cutout area on a side for facilitating lifting by a user. Fox, another apparatus for storing an article, is considered to disclose a cutout area on a side for facilitating lifting by a user at column 3 lines 36-50 wherein the disclosed cutout is considered to meet the claimed cutout function because both allow a cutout region shaped to facilitate lifting. It would have been obvious to one skilled in the art to combine the teachings of Slipp with the cutout area on a side for facilitating lifting by a user, considered inherently disclosed in Fox, for the purpose of providing a lifting an article

The Office Action concedes that the Slipp et al. reference fails to disclose a “cutout area.” In order to address this claim limitation, the Examiner has cited lines 36-50 in column 3 of U.S. Patent No. 2,879,900 to Fox (hereinafter the Fox reference). The cited portion of the Fox reference discloses a cutout area 12, which is illustrated in FIGURE 3.

To establish *prima facie* obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385, 265 USPQ 494, 496 (CCPA 1970). If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Independent claim 32 explicitly recites “said entire peg is positioned adjacent to said upper portion for storage and packaging of said apparatus.” With respect to this limitation, the Office Action states that “said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus and a second, operative position, wherein said peg is positioned so as to extend outwardly from said upper surface, so as to enable said peg to support an article, wherein said apparatus can conveniently be folded for packaging and storage purposes as expressly shown in Figures 3 & 4 and expressly discussed on the first page of that reference in lines 17-28 and on the second page lines 21-26” of the Slipp et al. reference. Lines 17-28 generally disclose “two vertical folding side frames, hinged at the side of a trough.” Lines 21-26 further disclose that the pegs c, d on the bars e are extended and folded as respectively illustrated in FIGURES 3 and 4. Although “the rack occupies a relatively small[er] space” in the folded position than the extended position, a significant portion of the pegs c and d remains above the trough (a) in the folded position. That is, the Slipp et al. reference discloses that only some portions of the pegs c and d are folded adjacent to the upper portion, but significant other portions are not placed “adjacent” to the “upper portion” of the tray. It appears from FIGURE 4 of the Slipp et al. reference that approximately a half of the length of the pegs c and d will remain above the side wall of the trough(a) and the rotatable horizontal bar e when the apparatus is in the folded or storage position.

The Fox reference discloses a drying rack for drying bottles. A preferred embodiment of the drying device includes rods 15 on a sloped wall 13. None of the rods 15 is movable, and each of these structures remains at a predetermined fixed position.

Appellant's independent claim 32 explicitly recites that "said entire peg is positioned adjacent to said upper portion for storage and packaging of said apparatus [emphasis added]." This limitation is clearly not met by the proposed combination of references. The Slipp et al. reference fails to teach, disclose or suggest how the remaining portions of the peg c and d above the trough (a) can be placed adjacent to the trough (a) to improve "storage and packing." The Fox reference entirely lacks the concept of the movable pegs. Accordingly, any combination of the two references would likewise fail to disclose pegs that have the entire length positioned adjacent to the upper portion of the tray. For this reason, it would not have been obvious to one of ordinary skill in the art to provide the current invention as it is set forth in dependent claim 32 based upon the Slipp et al. and Fox references alone or in combination.

Dependent claim 33 incorporates the above discussed patentable features of independent claim 32 and additionally requires "a cutout area." As noted above with respect to claim 32, neither of the Slipp et al. reference or the Fox reference discloses or suggests the patentable features of claim 32. Therefore, Appellant submits that claim 33 is allowable for this additional reason, as well as for the additional limitation that is set forth in claim 33.

Dependent claim 34 incorporates the above discussed patentable features of independent claim 32 and additionally requires "said cutout area is positioned beneath said one end of said upper face." As noted above with respect to claim 32, neither of the Slipp et al. reference or the Fox reference discloses or suggests the patentable features of claim 32. Therefore, Appellant submits that claim 34 is allowable for this additional reason, and by virtue of the significant additional limitations that are set forth in claim 34.

For all of the reasons stated above, Appellant respectfully requests the Board to overturn the §103 rejections of claims 32-34 that have been applied in the Office Action.

IX. Conclusion

For the foregoing reasons, Appellant respectfully submits that each of the rejections should be reversed, and all claims allowed, and such a decision is respectfully solicited.

Respectfully submitted,

/JLK/

Date: May 23, 2006

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X. APPENDIX- CLAIMS ON APPEAL

2. An apparatus for storing an article, comprising:

a tray having a bottom face that is adapted to be supported by an underlying surface such as a counter-top, and an upper face; and

a plurality of pegs extending outwardly from said upper face, each of said pegs being sized and arranged so as to be able to support an article, and

wherein each of said pegs are permanently mounted to said tray in such a manner as to be movable between a first storage position, wherein said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus, and a second, operative position, wherein said peg is positioned so as to extend outwardly from said upper surface, so as to enable said peg to support an article, wherein said apparatus can conveniently be folded for packaging and storage purposes, and, wherein said pegs are mounted to said tray in such a manner that no standing water may collect at a point where a peg is mounted, thereby minimizing potential for mold and bacterial growth.

4. An apparatus for storing an article, comprising:

a tray having a bottom face that is adapted to be supported by an underlying surface and an upper face; and

a plurality of pegs extending outwardly from said upper face, each of said pegs being sized and arranged so as to be able to support an article, and wherein

each of said pegs are permanently mounted to said tray in such a manner as to be movable between a first storage position, wherein said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus, and a second, operative position, wherein said peg is positioned so as to extend outwardly from said upper surface, so as to enable said peg to support an article, wherein said apparatus can conveniently be folded for packaging and storage purposes, and wherein said pegs are mounted to said tray in such a manner as to be movable only about a single axis of rotation and wherein said apparatus further comprises means for imparting lateral stability to said pegs, further deterring any motion other than about said

single axis of rotation.

5. An apparatus according to claim 4, wherein said means for imparting lateral stability to said pegs comprises at least one axle joining adjacent pegs together for common, ganged movement about a common axis of rotation.

6. An apparatus according to claim 5, further comprising location means for locking said axle in a rotational position that corresponds to said second operative position.

7. An apparatus according to claim 6, wherein said location means comprises means, connected to said axle, for frictional engaging said upper surface of said tray.

9. An apparatus for storing an article, comprising:

a tray having a bottom face that is adapted to be supported by an underlying surface, and an upper face; and

a plurality of pegs extending outwardly from said upper face, each of said pegs being sized and arranged so as to be able to support an article,

disk holding means, connected to said upper face of said tray, for holding baby bottle disks in a location that is isolated from areas of said tray in which liquid may collect; and wherein each of said pegs are permanently mounted to said tray in such a manner as to be movable between a first storage position, wherein said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus, and a second, operative position, wherein said peg is positioned so as to extend outwardly from said upper surface, so as to enable said peg to support an article, wherein said apparatus can conveniently be folded for packaging and storage purposes.

10. An apparatus according to claim 9, wherein said disk holding means comprises an upstanding boss member that is raised from said upper face of said tray, and a plurality of disk-receiving slots defined in said boss member.

11. An apparatus for storing an article, comprising:

a tray having a bottom face that is adapted to be supported by an underlying surface, and an upper face; and

a plurality of pegs extending outwardly from said upper face, each of said pegs being sized and arranged so as to be able to support an article,

a plurality of ring support members that are constructed and arranged to support a ring portion of a baby bottle;

and wherein each of said pegs are permanently mounted to said tray in such a manner as to be movable between a first storage position, wherein said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus, and a second, operative position, wherein said peg is positioned so as to extend outwardly from said upper surface, so as to enable said peg to support an article, wherein said apparatus can conveniently be folded for packaging and storage purposes.

12. An apparatus according to claim 11, wherein said ring support members include a stop member for supporting a ring member above and out of contact from said upper face of said tray.

13. An apparatus according to claim 11, wherein said ring support members are mounted to said tray in such a manner as to be movable between a first storage position, wherein said entire ring support member is positioned adjacent to said upper face for storage and packaging of said apparatus, and a second, operative position, wherein said ring support member is positioned at a large angle with respect to said upper face.

14. An apparatus according to claim 13, wherein said ring support members are mounted to said tray in such a manner as to be movable only about a single axis of rotation.

15. An apparatus according to claim 14, further comprising means for imparting lateral stability to said ring support members, further deterring any motion other than about said single axis of

rotation.

16. An apparatus according to claim 15, wherein said means for imparting lateral stability to said ring support members comprises at least one axle joining adjacent ring support members together for common, ganged movement about a common axis of rotation.

17. An apparatus according to claim 16, further comprising location means for locking said axle in a rotational position that corresponds to said second operative position.

18. An apparatus for storing an article, comprising:

a tray having a bottom face that is adapted to be supported by an underlying surface, and an upper face; and

a plurality of pegs extending outwardly from said upper face, each of said pegs being sized and arranged so as to be able to support an article,

a cutout area on a side of said apparatus for facilitating lifting of said apparatus by a user; and wherein

each of said pegs are permanently mounted to said tray in such a manner as to be movable between a first storage position, wherein said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus, and a second, operative position, wherein said peg is positioned so as to extend outwardly from said upper surface, so as to enable said peg to support an article, wherein said apparatus can conveniently be folded for packaging and storage purposes.

19. An apparatus for drying and storing an article, comprising:

a tray having a bottom face that is adapted to be supported by an underlying surface and an upper face;

bottle support means for supporting a baby bottle; and

disk holding means, connected to said upper face of said tray, for holding baby bottle disks in a location that is isolated from areas of said tray in which liquid may collect, whereby

baby bottle disks are and stored in a safe manner at a location that is convenient to a location at which baby bottles are being dried.

20. An apparatus according to claim 19, wherein said disk holding means comprises an upstanding boss member that is raised from said upper face of said tray, and a plurality of disk-receiving slots defined in said boss member.

21. An apparatus according to claim 18, wherein said cutout area is positioned beneath said one end of said upper face.

22. An apparatus for supporting baby bottles for drying, comprising:

 a tray having a bottom portion that is adapted to be supported by an underlying surface and an upper portion;

 a plurality of pegs extending outwardly from said upper portion, each of said pegs being sized and arranged so as to be able to support a baby bottle;

 mounting means for mounting said pegs to said tray so that said pegs are movable while mounted to said tray between a first storage position, wherein said entire peg is positioned adjacent to said upper portion for storage and packaging of said apparatus, and a second, operative position, wherein said peg is positioned so as to extend outwardly from said upper portion, so as to enable said peg to support an article, wherein said apparatus can conveniently be folded for packaging and storage purposes; and

 frictional means connected to said pegs for frictionally engaging said upper portion of said tray when said pegs are moved between said first storage position and said second operative position.

23. An apparatus according to claim 22, wherein said mounting means is further constructed and arranged so that no standing water may collect at locations where said pegs are mounted to said tray.

24. An apparatus according to claim 22, wherein said frictional means comprises a cam member having a surface that is constructed and arranged to bear against an upper surface of said tray.

25. An apparatus according to claim 22, wherein said frictional means is constructed and arranged to bear against a horizontal portion of said upper portion of said tray.

26. An apparatus according to claim 22, further comprising location means for locking said pegs in said second, operative position.

27. An apparatus according to claim 26, wherein said location means comprises a cam member having a first surface that is constructed and arranged to come into contact with a cam stop surface that is defined in said upper portion of said tray.

28. An apparatus according to claim 27, wherein said cam stop surface is elevated with respect to said upper portion of said tray.

29. An apparatus according to claim 27, wherein said frictional means comprises a second surface on said cam member, said second surface being constructed and arranged to bear against an upper portion of said tray that is on said upper portion when said peg is moved between said first storage position and said second operative position.

30. An apparatus according to claim 22, further comprising a cutout area on a side of said apparatus for facilitating lifting of said apparatus by a user.

31. An apparatus according to claim 30, wherein said cutout area is positioned beneath said one end of said upper portion.

32. An apparatus for supporting baby bottles for drying, comprising:

a tray having a bottom that is adapted to be supported by an underlying surface and an upper face, said upper face of said tray being oriented with respect to said bottom so that one end of said upper face is lower than an opposite end so that water will run toward said one end during use; and

a plurality of pegs extending outwardly from said upper face, each of said pegs being sized and arranged so as to be able to support an article, said pegs being positioned away from the edges of said upper face, whereby any water falling off of an article that is supported by any of said pegs will fall within said tray, and wherein

each of said pegs are permanently mounted to said tray in such a manner as to be movable between a first storage position, wherein said entire peg is positioned adjacent to said upper face for storage and packaging of said apparatus, and a second, operative position, wherein said peg is positioned so as to extend outwardly from said upper surface, so as to enable said peg to support an article, wherein said apparatus can conveniently be folded for packaging and storage purposes.

33. An apparatus according to claim 32, further comprising a cutout area on a side of said apparatus for facilitating lifting of said apparatus by a user.

34. An apparatus according to claim 33, wherein said cutout area is positioned beneath said one end of said upper face.

XI. EVIDENCE APPENDIX

There have been no submissions of evidence under 37 C.F.R. §§ 1.130, 1.131 or 1.132 in this reissue application.

XII. RELATED PROCEEDINGS APPENDIX

There have been no related decisions rendered by a court or the USPTO Board of Appeal and Interferences in this matter.